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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 344.

JOHN V. McCOLLUM, FREDERICK A. FOSTER, J. BARDWELL, AND H. S. McCOMB, APPELLANTS,

vs.

MARK HOWARD, JOHN WEBBER, JOSEPH YOUNG, AND SEVERAL OTHERS, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Grant for Motion to dismiss

FILED DECEMBER 10, 1869.

Dunn for the

SUPREME COURT OF THE UNITED STATES.

No. 344.

JOHN V. McCOLLUM, FREDERICK A. FOSTER, J. BARDWELL, AND H. S. McCOMB, APPELLANTS,

vs.

MARK HOWARD, JOHN WEBBER, JOSEPH YOUNG, CLARK DURANT, GEORGE BLISS, CHARLES W. DURANT, WILLIAM ELLIOTT, HENRY VANDERVEER, ROBERT MURRAY, BETSEY TRACY, HARRIET LE CONTE, MARGARET I. NISBET, JOSEPH W. CLARK, VOLKERT P. DOUW, CHRISTOPHER Y. LANSING JARED F. HARRISON, THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, GEORGE W. STANTON, JR., JOHN ELLIOTT, AND BLAKELY WILSON, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

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1 In the circuit court of the United States for the district of Iowa.

MARK HOWARD & JOHN WEBBER
ag't
THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, the Chicago & Rock Island Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, & the Chicago, Rock Island, and Pacific Railroad Company.

Be it remembered that, on the ninth day of July, A. D. 1866, on the application of James Grant, plaintiffs' solicitor, a writ of subpœna issued out of the office of the clerk of the circuit court of the United States for the district of Iowa against the City of Davenport, the Mississippi and Missouri Railroad Company, the Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, and the Chicago, Rock Island, & Pacific Railroad Company; which said writ, together with the return of the marshall thereon, is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to the City of Davenport, the Mississippi and Missouri Railroad Company, the Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, and the Chicago, Rock Island, and Pacific Railroad Company, greeting:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of August, A. D. 1866, it being the sixth day of August next (A. D. 1866), to answer to the bill of complaint of Mark Howard and John Webber, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of August, A. D. 1866.

3 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the 9th day of July, A. D. 1866, and of the independence the ——— year.

[SEAL OF COURT.] W. G. WOODWARD, *Clerk.*

[50-cents U. S. rev., affixed & cancelled.]

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Served the within subpœna on George W. Stanton, jr., Blakely Wilson, & John Elliott, personally, by delivering a copy thereof to each of them, at Davenport, Scott County, Iowa, on the 9th day of July,

4 A. D. 1866; also served the same on the Chicago, Rock

Island, and Pacific Railroad Company, and on the Chicago & Rock Island Railroad Company, by delivering a copy thereof to John F. Tracy, president of each of said railroads, personally, at Davenport, Scott County, Iowa, on the ninth day of July, A. D. 1866; also served the same on the Mississippi and Missouri Railroad Company, by delivering a copy hereof to Abel Kimball, superintendant of the said road, personally, at Davenport, Scott Co., Iowa, on the fourth day of August, A. D. 1866; and by delivering to Ebenezer Cook, secretary of said road, personally, a copy hereof, at Davenport, Scott County, Iowa, on the fourth day of August, A. D. 1866; also served the same on the City of Davenport, by delivering a copy hereof to Jno. L. Davis, mayor of the said city, personally, on the thirty-first day of July, A. D. 1866, at Davenport, Scott County, Iowa.

PETER MELENDY, *Marshall*,
By JNO. M. LYTER, *Spec. Deputy*..

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JNO. M. LYTER.

Endorsed: Filed, , A. D. 186 .

5 On this day, to wit, the ninth day of July, A. D. 1866, came the said plaintiffs, by their solicitors, Grant & Smith, and filed in said clerk's office their bill in said entitled cause; which bill is in the words and figures following, to wit:

In the circuit court of the U. S. for the district of Iowa.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT ET AL. } Bill in equity.

To the judges of the circuit court of the United States for the district of Iowa:

1. Mark Howard, who avers that he is a citizen of the State of Conneticut, and John Weber, who avers that he is a citizen of the State of New Jersey, bring this bill in equity against the city of Davenport, a municipal corporation created by, and a citizen of, the State of Iowa; the Mississippi and Missouri Railroad Company, a corporation for pecuniary profit, created by, and a citizen of, the State of Iowa; the
6 Chicago and Rock Island Railroad Company, a corporation created by, and a citizen of, the State of Illinois; George W. Stanton, jr., John Elliott, and Blakely Wilson, citizens of the State of New York; and the Chicago, Rock Island, and Pacific Railroad Company, a corporation for pecuniary profit, created by, and a citizen of, the State of Iowa.

2. And thereupon the said plaintiffs complain that on the twentieth day of October, 1864, the said Mark Howard recovered, by due process of law, in this court, judgment against the city of Davenport, for the sum of $3,562 50 debt, & costs taxed at $48 21; and by like due process of law, a like judgment at the May term, 1866, as of the twentieth of October, 1864, for the same sum, debt & costs, against the Missis-

sippi and Missouri Railroad Company; that on the twentieth October, 1865, and May term, 1866, as of October, 1865, said John Weber recovered a judgment against both of said defendants in this court, for the sum of $8,581 00 debt, and $28 90 costs; that said judgments were recovered & had for interest due on certain bonds, held
7 by said plaintiffs respectively, which had been executed and delivered by the said City of Davenport to E. Cook, or bearer, and guaranteed by the Mississippi & Missouri Railroad Company; that on the first of August, 1853, the said City of Davenport subscribed for seventy-five thousand dollars of the stock of the Mississippi and Missouri Railroad Company, which corporation, one of the defendants, was created to build a railroad from Davenport to the Missouri River; and to pay for said subscription, the said city, on the said first of August, 1853, executed and delivered its bonds to the amount of seventy-five thousand dollars, in sums of five hundred and one thousand dollars each, payable to Ebenezer Cook, or bearer, whereby the said city obligated itself to pay to the bearer of each of said bonds the principal debt therein named, with interest at the rate of ten per cent. per annum, payable half-yearly, on the first day of February and August in each year; and said bonds also contained a condition that the holders thereof might, at any time prior to the first of January, 1860, on the surrender of the same, receive in lieu thereof an equal amount of
8 stock in the said Mississippi and Missouri Railroad Company; the principal of said bonds was payable on the first day of August, 1865; and the said Mississippi and Missouri Railroad Company received said bonds in payment of said subscription, and by writing on the same, on the eighth September, agreed, that in consideration that the city had to A. C. Flagg, its treasurer, the stock held by said city in trust for the purpose above named, the said railroad company guaranteed to the holders of said bonds the payment of the principal and interest on said bonds, according to the tenor thereof; the said bonds were, after being so guaranteed, delivered by the said Mississippi and Missouri Railroad Company to purchasers, and said judgments were recovered against the city as makers, and the said railroad company as guarantors for unpaid interest. A copy of said bonds, guaranty, & interest notes is hereto annexed, and the originals made part of this bill. The said bonds, guaranty, & interest notes are all alike except in the numbers; some are for $500 and some for $1,000 each. That the said city of Davenport has, at the time of
9 filing this bill, a population of sixteen thousand inhabitants; its assessed value of property for 1866, is three millions seven hundred and fifty thousand dollars, and its bond debt & interest, including the seventy-five thousand dollars herein set forth, is four hundred thousand dollars, and it has paid no interest on said debt since the year 1860. And said Mark Howard says that he is the holder of the following bonds of one thousand dollars each: Nos. 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 6, 7, 8, 9, and 10; and the following bonds of five hundred dollars each: Nos. 21, 22, 23, 24, 73, 74, 75, 82, 90, 95, 96, 97, 98, 99, 100, 101, 102, 107, and 108, making a total of principal debt twenty-four thousand five hundred dollars, and the unpaid interest not included in said judgments is about fourteen thousand dollars. And the said John Weber says he is the holder of bonds Nos. 13, 14, 15, 61, making of principal $4,000, and the unpaid interest thereon not included in said judgments is $3,500.

10 3. That executions have been issued on both of said judgments against each defendant therein, & returned no property found,

and both the city & the Mississippi and Missouri Railroad Company are insolvent, and have no visible property out of which said judgments can be made by execution. That said judgments, executions, and returns are part of the records of this court, and subject to its inspection.

4. That prior to the date of either of said judgments, the Mississippi & Missouri Railroad Company had issued its bonds & mortgages, or trust deeds, to secure the same, at various times, to the amount of about seven millions of dollars, and at the date of said judgments said corporations had become insolvent & totally unable to pay its bond or guaranteed debt. That in addition to said bond debt, it had become liable in divers guarantees of the bonds of cities and counties through which the road was built, to the amount of over three hundred thousand dollars, the payment of which had been repudiated by said cities and counties, and among said guaranteed bonds are those on which the plaintiffs have recovered their judgments, & those which they now hold.

11 5. That on or about the eighteenth of October, 1865, at a meeting of the stock and bondholders of the Mississippi and Missouri Railroad Company, held in New York, in consequence of the inability of the company to pay its debts, a resolution was passed, requesting "the executive committee of said road to submit a report at the next meeting as to the advisability of selling the railroad." The said meeting was adjourned to the twentieth of October, 1865, and the executive committee reported at the adjourned meeting that a sale of the road for five and a half millions of dollars to the Chicago and Rock Island railroad was advisable, unless one and a half millions of dollars could be immediately raised by the bond and stockholders for the completion and equipment of the road to Des Moines. The executive committee, however, based their recommendation of the sale upon the condition that the distribution of five and one half millions of dollars is made according to the following scale :

1st mortgage bondholders, in full			$1,256,490
2nd " "	80 per ct. on	400,000	320,000
Oskaloosa division,	62 " " "	664,935	416,212
Land grant bonds,	70 " " "	3,878,550	2,714,635
12 Construction bonds,	30 per ct. on	693,764	208,120
Capital stock,	16 " " "	3,452,500	552,400
Expenses foreclosing mortgages			32,130
			$5,500,000

The stock and bondholders at said meeting adopted a resolution approving the sale on the basis proposed, and, on motion of Judge Emott, adopted the following resolution :

"*Resolved*, That a committee be appointed to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company, and the details of the sale authorized by this meeting; that Messrs. B. Wilson, G. W. Stanton, and John Elliott (defendants herein named) be appointed said committee, & that the committee be instructed to make arrangements with some trust company to receive the bonds and stock of the parties assenting, and issue certificates therefor, setting forth what the holder is entitled to receive."

At said meeting, a statement was made by John A. Dix, the president of the road, of the causes which had produced the insolvency of the road, and the necessity for a sale; a copy of the proceedings of said
13 meeting is hereto annexed and made part of this bill.

The plaintiffs aver that this proposition to sell said railroad and its branches and property was accepted by the Chicago and Rock Island Railroad Company, and on the first of November, 1865, a written "memorandum" of the understanding and agreement was made between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company, in pursuance of certain resolutions passed by a meeting of the bond and stockholders of the Mississippi and Missouri Railroad Company, held in the city of New York, on the 20th October, 1865, & duly executed by both companies, whereby it was agreed that the Mississippi and Missouri Railroad Company would, with all possible dispatch, cause its mortgages to be foreclosed upon its entire line of railroad, lands, depots, equipments, &c., and its entire property, real and personal, to be sold, so that the purchaser shall be able to transfer to such incorporated company in Iowa as the Chicago and Rock Island Railroad Company might designate to become the purchaser thereof, under said proposal of the twentieth October; that the
14 said Chicago and Rock Island Railroad Company should, within a year from the first day of December, 1865, cause to be incorporated, in the State of Iowa, a company which should purchase said property for the sum of five millions five hundred thousand dollars, and complete the road to Des Moines. And the Mississippi and Missouri Railroad Company agreed that whoever purchased at the forecloseure should sell the property to the said company for this sum, on the terms above set forth. The Chicago and Rock Island Railroad Company were to procure proper legislative power to consolidate their company with the new Iowa company, and when so consolidated were to cause the consolidated company to issue its bonds to the amount of nine millions of dollars, payable in twenty-five years, at seven per cent. interest, to be disposed of as follows: To purchase the Mississippi and Missouri railroad, as required by the proposal of twenty-first October, five and a half millions, the ballance to complete the road to Des Moines, and to pay off certain bonds of the Chicago and Rock Island Railroad Company, and certain bridge bonds not material to this cause. If the consolidation could not be
15 affected, bonds were to be issued by the new Iowa company, and guaranteed by the Chicago and Rock Island Railroad Company, to pay for the above purchase of five and a half millions.

The Chicago and Rock Island Railroad Company was to have posession and operate the Mississippi and Missouri railroad from first December, 1865, and to pay interest on said five and a half millions from that date in cash, up to the time of the transfer to the new company. By another agreement, of even date, the posession & control of the Mississippi and Missouri railroad and property was surrendered to the Chicago and Rock Island Railroad Company, as by copies of said agreements, hereto annexed, will more fully appear.

The said mortgages of the Mississippi and Missouri Railroad Company were foreclosed in this court at the May term, 1866. The Chicago and Rock Island company caused said new corporation to be created under the general incorporation laws of Iowa, called the Chicago, Rock Island, and Pacific Railroad Company. The franchises and all the property of the Mississippi and Missouri Railroad Company were sold under said decree of forecloseure on the ninth of July, 1866; and said
16 Chicago, Rock Island, and Pacific Railroad Company became the purchaser under the agreement herein named for the sum of two millions two hundred thousand dollars, & said sale is confirmed by this court. The Mississippi and Missouri Railroad Company has, except for the purpose of closing its business, ceased to exist, and aban-

doned the purpose for which it was created. The said sum of two millions two hundred thousand dollars, bid at said sale, was not paid down, but the trustees, plaintiffs in that suit, gave a receipt to the officer conducting the sale for the amount without actual payment, and the said sum is to be paid as part and parcel of the five and one-half millions of dollars, the contract price between said railroad company and the Chicago & Rock Island Railroad Company under the contract of first November, 1865, and as part of said sum is to be paid to the parties and in the manner required by said contract, and the resolutions of the stock & bondholders of twentieth October, 1865, by which sixteen per cent. is to be paid on each share of stock.

The said Stanton, Wilson, and Elliott, the persons named in
17 said resolution of twentieth October, 1865, were appointed trustees to get the stock and bonds of said Mississippi and Missouri Railroad Company, and deliver to the owners thereof certificates of the respective amounts they were to receive under the distribution of said proposal of said sale. The said City of Davenport has surrendered its certificates of stock, and agreed to receive its share of the bonds and money provided by said resolutions of 20th October. The said city also owns sixteen thousand dollars' worth of stock which was not deposited in trust when its said bonds were issued, but which is entitled to said dividend of sixteen per cent. The said Chicago and Rock Island Railroad Company is ready and willing, and is about to pay, said five and a half millions & interest as required by said contract. The holders of said stock in the Mississippi and Missouri Railroad Company when they surrendered the same to said trustees, Stanton, Elliott, and Wilson, agreed with them to ratify the authority given to the trustees to consent to the sale of the Mississippi & Missouri railroad, and to surrender their stock, & the trustees agree to deliver to them the new bonds of the new company in payment of said sixteen per cent., as by a
18 copy of said agreement hereto annexed will more fully appear. All of said stockholders entitled thereto have assented to said sale. The City of Davenport, and all other stockholders assenting to said sale, are entitled to said sixteen per cent. dividend on all their stock. None of the parties, in any of their arrangements, made any provision for the payment of said guaranteed debt of the plaintiffs.

6. That in a court of equity the whole property of the Mississippi and Missouri Railroad Company is a trust fund for the benefit of its creditors and stockholders.

By the agreement of sale & the subsequent acts the said corporation, which is insolvent, will become extinct, and is so now, except for the purpose of closing up its business, and has abandoned the purpose for which it was created. That all of said defendants have agreed with the Mississippi & Missouri Railroad Company to unite in disposing of all its property, & making said dividend to its stockholders without providing for the payment of the debt due to the plaintiffs by said judgments, and by said bonds and cupons. The plaintiff does not make the said stockholders parties to this bill, because the stock is divided
19 into thirty-four thousand shares and upwards. Very few of the stockholders reside in Iowa; none of them known to be citizens of Iowa. Except the City of Davenport, they are citizens of different States. It is impossible to make them all parties, and their interest is represented fully by their corporate body, the Mississippi & Missouri Railroad Company.

7. The plaintiffs claim that in this court they have, by obtaining their judgments, execution, and return, acquired a superior lien on the

hypothecated stock of the city of Davenport, and on their stock not hypothecated. That the dividend on the same is not sufficient to pay their bonds now due, judgments, interest, and costs. That they are entitled in this court to have their whole debt, which has been guaranteed by the Mississippi and Missouri Railroad Company, paid out of the dividend which is intended to be paid by the Chicago and Rock Island Railroad Company, and to go to the said stockholders. That the Mississippi and Missouri Railroad Company and the said City of Davenport, both being insolvent, the plaintiffs are entitled to the aid of this court, in causing the property of both of them in said railway corporation, to be applied to the plaintiffs' claims against them, and that neither the Mississippi and Missouri Railroad Company, nor its stockholders, can make any agreement to receive a benefit from the sale of the road and its franchises, and leave the plaintiffs' claims unpaid. That such acts as are proposed are not only contrary to equity, but prohibited by the laws of Iowa, under which said railroad company was created. This the defendants intend to do, and if they can dispose of said intended dividend without payment of the plaintiffs' claims, there is no property of the defendants out of which the plaintiffs' debt can be made.

8. The plaintiffs aver that they have no adequate remedy at law, and the acts of the defendants are contrary to equity. They pray for a writ of subpœna from this court to be directed to said defendants, and each of them, commanding them to appear before it at a day therein named, and answer all the allegations of this bill. That defendants may be enjoined from making said dividend, or receiving the same. That the dividend on the stock of the City of Davenport may be first applied as far as it will go to the payment of the plaintiffs' judgments, interest, and costs, and that so much of said dividend of sixteen per cent. as need be, which is to be made out of the stockholders of the Mississippi and Missouri Railroad Company generally, may be retained, and applied to the payment of the balance of the plaintiffs' judgment, and the residue of their debt, which is not in judgment; that an account may be taken of what is due to the plaintiffs. That if they are not entitled to a prefrence of the City of Davenport's dividend, they may be decreed a pro rata dividend. That so much of the dividend as is payable in cash be ordered to be paid directly to the plaintiffs. That so much as is to be paid in bonds be ordered to be sold until a sufficient amount is made to pay the plaintiffs' claims, and for such other relief as the nature of their case may require.

GRANT AND SMITH,
Sol's for Complainants.

Copy of bond, cupon, & guaranty.—State of Iowa.—Bond of the City of Davenport.

No. 10. $1,000.

Be it known that the City of Davenport, in the State of Iowa, owes to Ebenezer Cook, or bearer, the sum of one thousand dollars, for money borrowed, the receipt of which is hereby acknowledged; which sum the said city is obligated to pay on the first day of August, 1865, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent., payable semi-annually, at the office of E. W. Clark, Dodge & Co., in the city of New York, and the faith of said city of Davenport is hereby pledged for the payment of the semi-annual interest, and the ultimate redemption of the principal; and it is hereby

agreed, in behalf of the said city of Davenport, that on the surrender of this bond to the undersigned, or their successors in office, at any time before the first day of August, 1860, they will deliver to the owner of the bond, in payment of the same, one thousand dollars in the capital stock of the Mississippi and Missouri Railroad Company.

In testimony whereof, the said city has caused the corporate seal thereof to be affixed to this bond, and the same to be signed by the mayor and clerk, this first day of August, A. D. 1853.

[SEAL.] JOHN A. BOYD, *Mayor.*

Attest:
R. K. ALLEN, *Clerk.*

23 *Copy of cupons.*

$50. No. .

The City of Davenport will pay the bearer fifty dollars on the first day of August, 1861, at the office of E. W. Clark, Dodge & Co., being six months' interest on bond No. 10.

JOHN A. BOYD, *Mayor.*

Copy of guaranty.

In consideration that the City of Davenport has transferred to A. C. Flagg, treasurer, &c., the stock held by said city in the Mississippi and Missouri Railroad Co., in trust, the said Mississippi and Missouri Railroad Company hereby guarantees to the holder of this bond the payment of interest and principal, according to the terms thereof.

In witness whereof, the president & treasurer of said company have hereunto signed their names and caused the seal of said co-rporation to be hereunto affixed this eighth day of September, A. D. 1853.

[SEAL.] JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

Endorsed: Filed July 9, 1866.

W. G. WOODWARD, *Clerk,*
By S. S. ETHRIDGE, *Deputy.*

24 Now, on this day, the twenty-fifth day of September, A. D. 1866, came Joseph Young, by Grant, his solicitor, and filed in said clerk's office his amendment to the bill of the plaintiffs in said entitled cause; which amendment to bill is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

To the judges of the circuit court of the United States for the district of Iowa:

Joseph Young, who avers that he is a citizen of the State of Pennsylvania, now comes into court and prays to be made a co-plaintiff in the above bill in equity.

1st. And the said Joseph Young avers that he is the owner and holder

of the following bonds, to wit: Nos. 84, 68, 67, 66, 82, 72, 77, 80,
25 87, 88, 100, 12, 73, 89, 90, 39, 79, 80, 81, 70, 17, 21, 22, 25, 26, 40,
43, 44, 1, 15, 16, 28, 13, 14, 23, 85, 9, 10, 94, 92, 93, 64, 65, 97, 98,
11, 71, 20, 19, 24, 47, 48, 49, 50, 56, 57, 58, 59, 33, 34, 2, 3, 4, 5, 6, 31, 22,
25, 36, 37, 38, 41, 42, 45, 46, 51, 52, 53, 54, 55, 27, 18, 29, 30, 40, 99, 83,
for the sum of $500 each; and the following bonds of $1,000 each, to wit: Nos. 51, 3, 48, 49, 75, 76, 77, 79, 80, 5, 13, 68, 71, 78, 69, 70, 55, 65, 73, 54, 66, 67, 56, 57, 58, 59, 60, 11, 12, 40, 29, 72, 52, 53, 19, 20, 23, 22, 27, 26, 9, 61, 62, 63, 64, 28, 17, 74, 24, 7, 6, 18, 10, 25, 21; which were issued and delivered by the city of Muscatine, a municipal corporation, created by, and a citizen of, the State of Iowa, to the said the Mississippi & Missouri Railroad Company, in payment of subscription to the stock of said railroad company, bearing date December 31st, 1855, and payable to Adam Ogilvie, or bearer, on the first day of January, A. D. 1876, with interest, at ten per cent., for which cupons or interest notes were attached to said bonds; that said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that the city of Muscatine has transferred to
26 A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest, as it matures, & the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this first day of January, 1856.

[SEAL.] (Signed) "EBENEZER COOK, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That, after such guaranty, the said railroad company delivered and sold the same in open market, and the plaintiff is the holder of the above-numbered bonds. A copy of said bonds & cupons is hereto annexed.

That there is due on said bonds, for interest, the sum of sixty-five thousand and two hundred and sixty-five ($65,265) dollars, and the principal will be due on the first day of January, A. D. 1876, of $97,000.

27 That judgment has been recovered for prior interest on said bonds in this court, by Selden S. Walkey, against the city of Muscatine, and execution returned, "No property found." That said city of Muscatine is insolvent; that it has a population of seven thousand inhabitants, a bonded debt of $280,000, and a tax-list of one million eight hundred thousand dollars.

2nd. And the said Joseph Young further avers, that he is the holder & owner of the following bonds of the city of Davenport, to wit: Nos. 62, 63, & 64, for the sum of $1,000 each, and Nos. 67, 70, 51, 53, 55, for the sum of $500 each, which were issued and delivered by the city of Davenport, a municipal corporation, created by, and a citizen of, the State of Iowa, to the said Mississippi and Missouri Railroad Company, in payment of subscriptions to the stock of said railroad company, bearing date the first day of August, A. D. 1853, and payable to Ebenezer Cook, or bearer, on the first day of August, A. D. 1865, with interest, at ten per cent., for which cupons or interest notes were attached to said bonds; that said Mississippi & Missouri Railroad Company, for
28 value received, wrote upon said bonds the following guaranty:

"In consideration that the city of Davenport has transferred

to A. C. Flagg, treasurer, &c., the stock held by said city in the Mississippi and Missouri Railroad Company, in trust, the said Mississippi and Missouri Railroad Company hereby guarantee to the holder of this bond the payment of interest and principal according to the terms thereof.

"In witness whereof, the president and treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereunto affixed, at New York, this 25th day of August, A. D. 1854.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That after such guaranty, the said railroad company delivered and sold the same, in open market, and the plaintiff is the holder of the above-numbered bonds; and a copy of said bonds, cupons, and guaranty is hereunto annexed; that there is due on said bonds, for interest, the sum of twenty-nine hundred and twenty-five ($2,925), and the principal of fifty-five hundred ($5,500) dollars fell due August first, 1865.

29 That judgment has been recovered for prior interest on said bonds in this court by John Weber against the city of Davenport, and execution returned, "No property found." That said city of Davenport is insolvent; that it has a population of fifteen thousand inhabitants, a bond debt of $400,000, and a tax list of three million seven hundred thousand dollars.

3rd. And the said Joseph Young further avers that he is the holder & owner of the following bonds, to wit: Nos. 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 22, 23, 24, 25, 26, 94, 95, 72, 73, 61, 71, 68, 66, 67, 70, 69, 96, 97, 98, 65, 64, 79, 80, 61, 62, 77, 78, 76, 75, 74, 73, for the sum of $500 each, which were issued and delivered by the city of Iowa City, a municipal corporation created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company, in payment of subscriptions to the stock of said railroad company, bearing date March first, A. D. 1856, to John A. Dix or bearer, and payable on the first day of January, A. D. 1876, with interest at ten per cent. per

30 annum, for which cupons or interest notes were attached to said bonds. That said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that the City of Iowa City has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi & Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, & the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands & caused the seal of said company to be affixed, at New York, this 20th day of August, 1856.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

That after such guaranty, the said railroad company delivered and sold the same in open market, and the plaintiff is the holder of the above-numbered bonds; a copy of said bonds, cupons, and guar-

31 anty is hereto annexed. That there is due on said bonds for interest the sum of twenty-three thousand four hundred and forty-four dollars, and the principal will be due on the first day of January, A. D. 1876, $35,000.

That judgment has been recovered for prior interest on said bonds in

this court by P. S. Barlow against the city of Iowa City, and execution returned, "No property found." That said city of Iowa City is insolvent, that it has a population of five thousand, and bond debt of $120,000, and a tax list of less than two million dollars.

4th. And the said Joseph Young further avers that he is the holder and owner of the following numbered bonds of Scott County, to wit: 25, 4, 20, 14, 24, 5, 12, 18, 17, 6, 9, 16, 19, 13, 11, 21, 22, 23, 10, & 8, for the sum of $1,000 each, and Nos. 10, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 45, 50, 69, 11, 12, 10, 13, 17, 19, 31, 38, 4, & 15, of five hundred dollars each, which were issued and delivered by the county of Scott, a municipal corporation created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company in payment of sub-
32 scriptions to the stock of said railroad company, bearing date October 1st, A. D. 1853, and payable to Ebenezer Cook, or bearer, on the first day of October, A. D. 1868, with interest at the rate of ten per cent., for which cupons or interest notes were attached to said bonds. That said Mississippi and Missouri Railroad Company, for value received, wrote upon said bonds the following guaranty:

"In consideration that the County of Scott has transferred to A. C. Flagg, treasurer, &c., the stock held by said county in the Mississippi and Missouri Railroad Company, in trust, the said Mississippi and Missouri Railroad Company hereby guarantee to the holder of this bond the payment of principal and interest, according to the terms thereof.

"In witness whereof, the president & treasurer of said company have hereunto signed their names & caused the seal of said corporation to be hereunto affixed, at New York, this first day of March, A. D. 1854.

[SEAL.] (Signed) "JOHN A. DIX, *President.*
(Signed) "A. C. FLAGG, *Treasurer.*"

33 That after such guaranty, the said railroad company delivered & sold the same in open market, and the plaintiff is the holder of the above-numbered bonds; a copy of said bonds, cupons, & guaranty is hereto annexed. That there is due on said bonds for interest the sum of seventeen thousand ($17,000) dollars, and the principal will be due on the first October, 1868, of $31,000.

That judgment has been recovered for prior interest on said bonds in this court by against the county of Scott, and execution returned, "No property found." That said county of Scott has a population of thirty thousand, and a tax list of seven millions dollars, and a bond debt of $100,000.

5th. And the said Joseph Young further avers that he is the holder and owner of the following numbered bonds of the county of Muscatine, to wit: 34, 35, 36, 37, 5, 41, 43, 20, 21, 46, 42, 26, 52, 54, 56, 57, 58, 2, 38, 39, 87, 18, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 1, 17, 19, 3, 4, 14, 17, 19, 16, B No. 18, B No. 7, for the sum of one thousand dollars each, which were issued & delivered by the county of Muscatine, a
34 municipal corporation, created by, and a citizen of, the State of Iowa, to the said Mississippi & Missouri Railroad Company in payment of subscription to the stock of said railroad company, bearing date January second, 1854, and payable to George C. Stone, or bearer, on the first day of January, A. D. 1874, with interest at the rate of ten per cent. per annum, for which cupons or interest notes were attached to said bonds. That said Mississippi and Missouri Railroad Company wrote upon said bonds the following guaranty:

"In consideration that the County of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the Missis-

sippi and Missouri Railroad Company, the said railroad company hereby guarantee the prompt payment of the principal of this bond.

"In witness whereof, by resolution of the board of directors, the vice-president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 26th day of September, 1854.

[M. & M. R. R. SEAL.] (Signed) "EBENEZER COOK, *V. Pres't.*
(Signed) "A. C. FLAGG, *Treas.*"

35 That after such guaranty, the said railroad company delivered & sold the same in open market. The plaintiff is the holder of the above-numbered bonds; a copy of said bonds, cupons, and guaranty, is hereto annexed. That there is due on said bonds for interest the sum of $36,677 (thirty-six thousand six hundred and seventy-seven dollars), and the principal will be due January first, 1874, of $47,000. That said county has neglected & failed to pay the interest due on said bonds since 1860, and has no property out of which said amounts due can be made; that judgments have been recovered against said county, executions issued & returned, "No property found." That said county of Muscatine has a population of twenty thousand inhabitants, a tax list of four millions of dollars, and a bond debt of $200,000.

6th. And said Joseph Young further avers that, in addition to the particular bonds and cupons hereinbefore specified, he is the owner and holder of divers other like bonds and cupons, so executed respectively by the said cities of Davenport, Muscatine, Iowa City, &
36 the said counties of Scott, Muscatine, & Johnson, and so guaranteed by the said Mississippi and Missouri R. R. Co., & of judgments recovered thereon against the said cities and counties respectively, and said railroad co., in this court, which bonds & cupons, & the guaranties thereof are respectively in the same form precisely as those of the same city or county hereinbefore specified, & belong to the same class of bonds respectively as those so specified, which said additional bonds and cupons & the judgments thereon amount, in the aggregate, to the sum of four hundred thousand dollars.

And the plaintiff adopts & renews all of the allegations of plaintiffs' bill, and applies them to his own case.

And he prays that he may have the same relief as said other plaintiffs, and he avers that, as to said debt not due, he is willing to receive the same now, if the defendants will assent thereto, and if they will not he prays that said dividend of sixteen per cent. may be seized by this court & held & retained in such manner as this court may direct until said debts are due.

GRANT, *for Plaintiff.*

37 *Copy of bonds, guarantee, & cupons.—Copy of Iowa City bonds, cupons, and guaranty.*

No. 83. $500.

Bond of the city of Iowa City, United States of America, State of Iowa.

Be it known that the city of Iowa City owes to John A. Dix, or bearer, the sum of five hundred dollars, for money borrowed to pay the subscription of said city to the capital stock of the Mississippi and Missouri Railroad Company, the receipt whereof is hereby acknowledged, and which sum the said Iowa City hereby promises to pay, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day

of January, eighteen hundred and seventy, with interest on said sum of five hundred dollars, at the rate of ten per cent per annum, payable annually on the first day of January in each year, and the faith of the said Iowa City is hereby pledged for the annual payment of interest, & the ultimate redemption of the principal.

38 And I, G. D. Wordlin, mayor of [of] said Iowa City, do hereby certify that, by a vote of the legal electors of the said Iowa City, at an election held on the 12th day of March, 1855, in accordance with an ordinance of the city council of Iowa City, sanctioning the same, that the said city was authorized to issue city bonds to the amount of fifty thousand dollars, for the purpose aforesaid, bearing interest at ten per cent. per annum, and that the above is one of the bonds issued for said purpose, and is entitled to the benefit arising from the sinking fund created by said ordinance to provide for the payment of principal & interest of said bonds.

In testimony whereof, the said city has caused the corporate seal thereof to be affixed to this bond, & the same to be signed by the mayor and attested by the recorder, this first day of March, 1856.

(Signed) G. D. WORDIN, *Mayor.*

Attested:

J. G. SPERRY, *Recorder.*

Indorsed:

In consideration that the city of Iowa City has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi & Missouri Railroad Company, the said railroad company

39 hereby guarantees the prompt payment of the interest as it matures, & the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president & treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 20th day of August, 1856.

[SEAL.] (Signed) JOHN A. DIX, *President.*
(Signed) A. C. FLAGG, *Treasurer.*

Copy of cupons.

The city of Iowa City will pay the bearer fifty dollars, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day of January, 1862, being one year's interest on bond No. 83.

$50. G. D. WORDIN, *Mayor.*

Bonds, cupons, and guaranty all alike, except No.'s & time of payment of cupons.

40 *Copy of Muscatine City bonds.*—$1,000.—*Bond of the city of Muscatine, United States of America, State of Iowa, one thousand dollars.*

Be it known that the City of Muscatine owes to Adam Ogilvie, or bearer, the sum of one thousand dollars, for money borrowed, the receipt of which is hereby acknowledged, and which sum the city of Muscatine hereby promises to pay, at the office of E. W. Clark, Dodge & Co., in the city of New York, on the first day of January, eighteen hundred and seventy-six, with interest on said sum of one thousand dollars, at the annual rate of ten per cent., payable semi-annually, on the

first day of January and first day of July in each year; and the faith of the said city of Muscatine is hereby pledged for the semi-annual payment of the interest, and the ultimate redemption of the principal upon the surrendering of this bond to A. C. Flagg, treasurer, in trust, at any time previous to said first January, 1876, the holder thereof will be entitled to ten shares of the capital stock of the Mississippi and Missouri Railroad Company in satisfaction thereof.

41 Wherefore I, J. H. Wallace, mayor of the city of Muscatine, do hereby certify that, by a vote of the legal electors of the said city of Muscatine, at an election had 13th August, 1855, in accordance with an ordinance of a common council sanctioning the same, that the said city was authorized to borrow the sum of one hundred and thirty thousand dollars, and to issue its bonds therefor, bearing interest at ten per cent. per annum, and that the above is one of the bonds given for said loan.

In testimony whereof, I have hereunto set my hand and affixed the seal of said city, this thirty-first day of December, A. D. 1855.

[SEAL.] J. H. WALLACE, *Mayor.*

Attested:

D. P. JOHNSON, *Recorder.*

The City of Muscatine will pay the bearer, on the first day of January, 1865, fifty dollars, at the office of E. W. Clark, Dodge & Co., in the city of New York, interest due on their bond No. 76.

$50. J. H. WALLACE, *Mayor.*

42 In consideration that the city of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said city in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the interest as it matures, and the eventual payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this first day of January, 1856.

[SEAL.] EBENEZER COOK, *V. President.*
A. C. FLAGG, *Treasurer.*

Copy of Muscatine Co. bonds, cupons, and guaranty.—State of Iowa.—Bond of the County of Muscatine.

B, No. 18. $1,000.

Be it known that the County of Muscatine, in the State of Iowa, owes to George C. Stone, or bearer, the sum of one thousand dollars for money borrowed, the receipt whereof is hereby acknowledged, which sum the said county of Muscatine is obligated to pay on the first

43 day of January, 1874, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent., payable annually, at the office of the county treasurer, in Muscatine County, and the faith of the said county of Muscatine is hereby pledged for the annual payment of the interest, and the ultimate redemption of the principal.

In testimony whereof, I, Arthur Washburn, judge of said county, have hereunto set my hand and affixed the seal of said county, this second day of January, A. D. 1854.

[SEAL.] ARTHUR WASHBURN,
Co. Judge.

Attest:

WM. LEFFINGWELL, *Co. Clerk.*

Endorsed:

In consideration that the County of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the Mississippi and Missouri Railroad Company, the said railroad company hereby guarantees the prompt payment of the principal of this bond.

In witness whereof, by virtue of a resolution of the board of
44 directors, the vice-president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed, at New York, this 26th day of September, 1854.

[SEAL.] EBENEZER COOK, *V. President.*
A. C. FLAGG, *Treas.*

$100. B, No. 20. $1,000.

The County of Muscatine will pay the bearer one hundred dollars on the first day of January, 1874. at the office of the county treasurer, in Muscatine County, being one year's interest on bond B, No. 18.

ARTHUR WASHBURN,
County Judge.

Copies of the bonds, cupons, and guaranty of city of Davenport are the same as those in the original bill, to which refrence is made.

Copy of Scott County bonds, cupons, and guaranty.—Bond of the County of Scott.

No. 10. $500.

Be it known that the County of Scott, in the State of Iowa, in
45 its corporate capacity, owes to Ebenezer Cook, or bearer, the sum of five hundred dollars, for money borrowed, the receipt of which is hereby acknowledged, which sum the said county is obligated to pay, on the first day of October, 1868, with interest on said sum of five hundred dollars, at the yearly rate of ten per cent., payable semi-annually, at the office of E. W. Clark, Dodge & Co., in the city of New York, and the faith of the said County of Scott is hereby pledged for the semi-annual payment of the interest, and the ultimate redemption of the principal; and it is hereby agreed, on behalf of said county of Scott, that on the surrender of this bond to the undersigned, or their successors in office, on or before the first day of October, 1860, they will deliver to the owner of the bond, in payment of the same, five hundred dollars in the capital stock of the Mississippi and Missouri Railroad Company.

In testimony whereof, the said County of Scott has caused the corporate seal thereof to be affixed to this bond, & the same to be signed by their county judge & attested by their clerk, this 1st day of October, A. D. 1853.

[SEAL.] WM. BURRIS, *County Judge.*

Attest:

JAMES , *Clerk.*

46 In consideration that the County of Scott has transferred to A. C. Flagg, treasurer, &c., the stock held by said county in the Mississippi and Missouri Railroad Company in trust, the said Mississippi & Missouri Railroad Company hereby guarantee to the holder of this bond the payment of interest & principal according to the terms thereof.

In witness whereof, the president and treasurer of said company have hereunto signed their names and caused the seal of said corporation to be hereto affixed, at New York, this first day of March, A. D. 1854.

[SEAL.] JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

Cupon.

$25. $500.

The County of Scott will pay the bearer twenty-five dollars on the first day of October, 1865, at the office of E. W. Clark, Dodge & Co., in the city of New York, for six months' interest on bond No. 10.

W. BURRIS, *Co. Judge.*

Endorsed: Filed Sept. 25, 1866.

W. G. WOODWARD, *Clerk,*
By S. S. ETHRIDGE, *Deputy.*

47 On this day, the twenty-seventh day of February, 1867, three writs of subpœna were issued out of said clerk's office against the City of Muscatine, the City of Davenport, the City of Iowa City, the County of Scott, the Mississippi and Missouri Railroad Company, the Chicago & Rock Island Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, and the Chicago, Rock Island, and Pacific Railroad Company; which said writs, with the acceptances of service thereon, are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Iowa, ss:*

The President of the United States to the City of Muscatine, the City of Davenport, the City of Iowa City, the County of Scott, the Mississippi and Missouri Railroad Company, the Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, & the Chicago, Rock Island, and Pacific Railroad Company:

48 We command you and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of April, 1867, it being the first day of April, A. D. 1867, to answer to the bill of complaint of Mark Howard and John Weber, filed in the office of the clerk of said court, & then & there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the independence, the —— year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cents U. S. rev. stamp affixed & cancelled.]

MEMORANDUM.—The within-named defendants are notified that
49 unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Due and legal service of the within subpœna accepted this 27th day of February, A. D. 1867, for the city of Muscatine, and service by marshall waived.

B. HERSHEY,
For Mayor, &c., the City of Muscatine.

Endorsed: Filed , 186 .

UNITED STATES OF AMERICA, *District of Iowa, ss:*

The President of the United States to the City of Muscatine, the City of Davenport, the City of Iowa City, the County of Scott, the Mississippi & Missouri Railroad Company, the Chicago and Rock Island Railroad Company, George W. Stanton, jr., John Elliott, and
50 Blakely Wilson, & the Chicago, Rock Island, and Pacific Railroad Company:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday of April, 1867, it being the first day of April next (A. D. 1867), to answer to the bill of complaint of Mark Howard & John Weber, filed in the office of the clerk of said court, and then and there to receive and abide by such judgment or decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the independence the year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cent U. S. rev. stamp affixed and cancelled.]

51 MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court at Des Moines aforesaid, on or before the day to which the above writ is returnable as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Due and legal service of the within subpœna accepted this 27th day of February, A. D. 1867, for the city of Iowa City, and service by marshall waived.

J. Y. BLACKWELL,
Attorney for City of Iowa City.

Endorsed: Filed , 186 .

UNITED STATES OF AMERICA, *State of Iowa, ss:*

The President of the United States to the City of Muscatine, the City of Davenport, the City of Iowa City, the County of Scott, the Mississippi and Missouri Railroad Company, the Chicago & Rock
52 Island Railroad Company, George W. Stanton, jr., John Elliott, & Blakely Wilson, & the Chicago, Rock Island, & Pacific Railroad Company:

We command you and each of you that you appear before the judges of the circuit court of the United States for the district of Iowa, at

Des Moines, on the first Monday of April, 1867, it being the first day of April next (A. D. 1867), to answer to the bill of complaint of Mark Howard and John Weber, filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of April, A. D. 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Des Moines, this the 27th day of February, A. D. 1867, and of the indepenence the —— year.

[SEAL.] W. G. WOODWARD, *Clerk.*

[50-cent U. S. revenue stamp affixed & cancelled.]

53 MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Des Moines aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk.*

Due and legal service of the within subpoena accepted this 27th day of February, A. D. 1867, for the county of Scott, & service of marshall waived.

JOHN N. DAVIS,
Chairman Board of Supervisors for the County of Scott.

Endorsed: Filed , A. D. 186 .

On this day, the sixteenth day of May, A. D. 1867, came the defendants George W. Stanton, jr., Blakely Wilson, & John Elliott, by James Emott, and Cook and Drury, their solicitors, and filed in said clerk's office their answer to the plaintiffs' bill; which answer is in the words & figures following, to wit:

54 In the circuit court of the United States of Iowa.—In equity.

MARK HOWARD AND JOHN WEBER
against
GEORGE W. STANTON, JR., JOHN ELLIOTT, AND Blakely Wilson, impleaded with the City of Davenport & others.

The seperate answer of the defendants George W. Stanton, jr., John Elliott, and Blakely Wilson, to the bill of complaint of the above plaintiffs, respectfully showeth—

These defendants, impleaded as above, jointly and severally answering, say—

That they have no knowledge or information, sufficient to form a belief, whether said plaintiff recovered a judgment against the city of Davenport; whether an execution has been issued on such judgment and returned unsatisfied; whether the debt, population, and taxable property of said city are as stated in said bill, or how otherwise; and whether said city has no property and is insolvent, as said matters are alleged in said bill; & these defendants therefore deny the
55 allegations of said bill in that behalf.

That they have no knowledge or information, sufficient to form a belief, for what any judgment in favor of the plaintiff against the city of Davenport was recovered; or whether said city subscribed the amount alleged in the said bill of complaint to the stock of the Mississippi and Missouri Railroad Company, and issued its bonds to pay such subscription and received said scrip therefor; or whether said bonds were converted into stock; or whether said railroad company guaranteed the payment of said bonds; or whether the judgments aforesaid was for interest on said bonds; or what amount of interest is due on said bonds; or whether said plaintiff is the holder of certain of said bonds, as the said several matters are alleged in said bill of complaint, & therefore they deny the said allegations of said complaint in these respects.

That they have no knowledge or information, sufficient to form a belief, whether the said railroad company had guaranteed the payment of over three hundred thousand dollars of bonds of certain cities & counties, as alleged in said bill, & therefore they deny the same. They deny that said corporation was insolvent, except as hereinafter
56 stated.

But they admit that, as they are informed and believe, said Mississippi & Missouri Railroad Company had. at or before that time, failed to meet, and was unable from its earnings to pay, the interest on its bonds, which were secured by mortgages on said road and its equipments, such mortgages together covering the whole road, but in distinct parcels; and that such mortgages were, or certain of them were, then presently due & liable to be foreclosed.

These defendants deny that the Mississippi and Missouri Railroad Company, with its stockholders and bondholders, on or about the twentieth of October, 1865, at a meeting held for that purpose, made a proposal to sell out the said railroad, its franchises, and property, as alleged in said bill of complaint, & to divide the proceeds of said sale as therein stated; or that such proposal was accepted by the Chicago and Rock Island Railroad Company; or that the contract of November first, 1865, between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company, was intended to carry out such purpose.

And these defendants deny the allegations of said bill of com-
57 plaint in regard to the provisions of the contract between said Mississippi & Missouri Railroad Company and said Chicago and Rock Island Railroad Company, and they refer to said agreement for the true purport thereof.

And these defendants, further answering, say that, as they are informed and believe, and aver the truth to be, in October, 1865, the bonded debt of the Mississippi and Missouri Railroad Company, secured by mortgages which were a lien upon the road of said company, its depot grounds, stations, lands, & all its real estate, and upon all its rolling stock and equipments, amounted to about six millions four hundred thousand dollars of principal, besides nearly five hundred thousand dollars of unpaid interest, or cupons, the whole of which debt, both principal and interest, was a lien upon the real estate of said company which had prefrence and priority to any debt, demand, or liability upon any alleged guaranty by said company of the obligation of any city or other body or corporation. That in addition to this mortgage debt the said railroad company was indebted on certain obligations known as income bonds, to the payment of which the earnings of the road were pledged, amounting to upwards of half a million of dollars; that the

holders of bonds secured by certain of the mortgages were
58 threatning to foreclose the mortgages, and to sell the road in parcels, & in a manner greatly to the disadvantage of all concerned; that the liens & claims of the different mortgages were in certain respects conflicting, and that any littigation on the part of any bondholders or of the stockholders, such as would be likely to arise from hostile suits of forecloseure upon the mortgages, would involve delay & expense as well as difficulty in finding a purchaser, which would be njurious, if not ruinous, to all concerned.

And these defendants further say that, under these circumstances, on the eighteenth of October, 1865, a meeting was held of parties interested in the various classes of bonds, and in the stock of said company, which was the meeting referred to in said bill, but said meeting was not a meeting of the said corporation, or of its officers or members, nor was its acts or resolutions the action of said corporation. That at such meeting it was stated that the Chicago & Rock Island Railroad Company would probably be willing to buy said road, and the property of said company, and to pay for the same five millions and a half of dollars, provided a sale could be effected, and a title made amicably and immediately.

59 That the amount thus specified was not sufficient to pay the mortgage debt, or satisfy the liens on the property of the said company.

And thereupon it was resolved & agreed by the persons present at such meeting that if the mortgage creditors and the stockholders of said company would assent to, & interpose no delay, and raise no question as to the forecloseure of the mortgage upon said road, or the distribution of the proceeds thereof, and if the said road could be sold to the Chicago & Rock Island company, or any other purchaser who would be willing to pay five and a half of dollars, & that amount should be realized ultimately from said property, it should be distributed in a certain order and ratio among the creditors of said company, holding its bonds, as aforesaid, & the said creditors, or such of them, as assented to this arrangement, consented that, if that amount was thus realized, the sum of five hundred and fifty-two thousand five hundred dollars should be relinquished by them, the said bondholders, rateably to be distributed among the persons holding the stock of the said company.

And these defendants say that until the said bondholders and
60 mortgages were paid and satisfied, no other persons had any legal or equitable claim on the road and property of the company, or upon any amount in any way proceeding therefrom, and that such allowance therefrom to the persons holding stock in said road was not a payment to said railroad company or corporation, but was a disposition by the bondholders and creditors aforesaid of money, to which no other persons had any claim or title, legal or equitable.

And these defendants further say that they were appointed by said meeting a committee to obtain the assent of the creditors holding the bonds, and of the holders of the stock of said company, to the arrangement recomended by said meeting to an amicable forecloseure of said mortgages, and to the distribution of whatever amount should in any way be realized from said road among the creditors holding liens thereon, in the order specified in the schedule submitted to said meeting. That thereafter the agreement between the Mississippi and Missouri Railroad Company and the Chicago and Rock Island Railroad Company, dated the first day of November, 1865, referred to in said bill,

was made, to which these defendants pray leave to refer, and an
61 agreement was made and executed by the creditors holding bonds of said Mississippi and Missouri Railroad Company, secured by the mortgages thereon, and the persons holding stock in said road with these defendants, to which they beg leave to refer.

And these defendants further allege that suits were commenced in this court by the mortgagees holding the several mortgages upon said road, lands, property, and franchises of said railroad company to foreclose said mortgage, and that such proceedings were thereupon had, that on the eighth day of May, 1866, a judgment or decree was rendered by this court for the payment of said mortgages, respectively, by a time therein set, and in default of such payment for the sale of said railroad, lands, property, franchises, by and under the direction of a special master commissioner, appointed for that purpose, to which judgment or decree, or to an exemplified copy thereof, these defendants ask leave to refer.

And afterwards the said mortgages not having been paid, or any of them, by the time in said decree specified, the said master com-
62 missioner proceeded to advertise said property for sale at public auction in the manner directed in said decree, and, on the day appointed, sold the same at public auction, openly & fairly, in the usual manner of judicial sales, to the highest bidder, and the same brought the sum of two millions one hundred thousand dollars, that being the highest sum bid for the same.

These defendants deny that such purchase was made under any agreements or otherwise, than under said decree, or that said price was a nominal sum, or that said purchaser was bound to pay any larger sum or price; and said sale was afterwards duly confirmed by this court.

And the said Chicago & Rock Island Railroad Company proceeded afterwards, in pursuance of its agreements aforesaid, and in consideration of said creditors' assenting to such sale, to pay to these defendants, in their behalf, the price or sum which they had been willing and agreed to pay for said road; and these defendants, with the assent and by the authority of said creditors, are ready to distribute the said sum of $552,400 among persons holding stock in said com-
63 pany, the whole of said amount being paid to, and received by, these defendants, not in cash, but in bonds or obligations of the Chicago, Rock Island, and Pacific Railroad Company.

These defendants deny that they proceeded to get up the stock of said Mississippi and Missouri Railroad Company as alleged in said bill, or did any other acts in relation thereto than are hereinbefore set forth.

And these defendants deny all the allegations of said bill, in respect to the acts and agreements therein related & referred to, except as hereinbefore set forth, and ask leave to refer to said original agreements respectively when produced.

And they aver and insist that if said persons holding stock in said railroad are now entitled to said securities to the amount of $552,400, which are to be delivered to these defendants as aforesaid, the same the property of the creditors holding lien by mortgage on said railroad hereinbefore referred to, and these defendants are advised and insist that such creditors or their trustees are necessary parties to this suit, is defective by reason of their absence.

64 And these defendants are advised and insist that said plaintiff has no right or equity to prosecute this suit; they deny all wrongdoing or design in said bill charged against them, and they humbly pray

to be hence dismissed with their costs and charges in this behalf most wrongfully incurred.

JAMES EMOTT,
COOK AND DRURY,
Solicitors for Defendants herein named.

Endorsed: Filed May 16, 1867.

WOODWARD, *Clerk.*

65 And on the same day, the sixteenth day of May, A. D. 1867, came the defendant, the Chicago, Rock Island, & Pacific Railroad Company, by John P. Cook, its solicitor, and filed in the clerk's office its answer to the plaintiffs' bill; which answer is in the words & figures following, to wit:

United States circuit court in and for the district of Iowa.

STATE OF IOWA, *Scott County, ss:*

MARK HOWARD ET AL.
vs.
CITY OF DAVENPORT AND CHICAGO & ROCK Island & Pacific Railroad Company and others.

The seperate answer of the Chicago, Rock Island, and Pacific Railroad Company.

Now comes the defendant, and, for answer to the said bill of complaint of said complainants, says that it has no knowledge, in-
66 formation, or belief in relation to the said judgments of said plaintiffs, except as set forth in said petition, and have no knowledge, information, or belief as to the issuing of bonds by the city of Davenport, except as in said bill set forth; that it has no knowledge, information, or belief in relation to the guarantee of said bonds, except as set forth in said petition. It has no knowledge, information, or belief as to the population or value of property in the city of Davenport, in 1866, except as stated in said bill. and admits the same to be true.

It admits that executions were issued on said judgments, and returned no property, but does not admit that the city of Davenport is insolvent. It admits that the Mississippi and Missouri railroad issued its bonds and mortgages to secure the same, to the amount of about seven millions of dollars, and admits that it guaranteed bonds of cities and counties to the amount of about three hundred thousand dollars.

It has no knowledge as to the meeting of the bond & stockholders of the Mississippi and Missouri Railroad Company in the city of New
67 York, on the eighteenth of October, 1865, or on the twentieth of October, 1865.

It has no knowledge of a proposition to sell the Mississippi and Missouri Railroad Company to the Chicago and Rock Island Railroad Company, or of any agreement in relation thereto, except as in said bill stated, and therefore cannot deny the same; but this defendant admits nothing as to the power to make said contract, or the effect of the same.

This defendant admits that mortgages on the Mississippi and Missouri Railroad Company were foreclosed, and that this defendant became incorporated under the laws of the State of Iowa, and at the sale of the said railroad & appurtenances and franchises became the pur-

chaser of the same at and for the sum of two millions one hundred thousand dollars.

This defendant admits that Stanton, Wilson, and Elliott were appointed a committee to get up the stock & bonds of the M. & M. Railroad Company, and, in pursuance of such appointment, entered upon the duties of their office, & selected the Union Trust Company of New York City as their agent, to receive the surrender of the stocks
68 & bonds of said M. and M. Railroad Company, and to issue certificates therefor, a copy of which copies are on file as exhibits in this case; that a large amount of bonds & stock of said railroad company was surrendered, and certificates issued therefor.

This defendant further says that the bonds of this company are to be issued and received by said certificate holders for their pro rata share of the proceeds of the purchase of the M. & M. Railroad Company, and they aver that they are ready and willing to deliver the same on surrender of the said certificates.

And this defendant, further answering, says that by contract between this defendant and the said committee, Stanton, Elliott, & Wilson, this defendant has assumed the performance of the duties of said committee, in so far as to receive the surrender of the certificates issued by the Union Trust Company, and to issue to the holders thereof the bonds to which they may be entitled by their said certificates; and defendant further says that a large amount of stock held by individuals in said M. & M. Railroad Company was surrendered by the holders
69 thereof to said committee or their agent, the Union Trust Company, and certificates issued to them for the same; which said certificates are payable to bearer, and therefore negotiable.

Said defendant further says that a large amount of said certificates have been transferred & sold by the original holders thereof, and are now in the hands of third persons other than the original holders, who purchased the same in good faith for a valuable consideration before the commencement of this suit, without any notice of the equities existing between other parties to them, and who now claim that they are entitled to the number of bonds of this company which their several certificates call for, and this defendant says that they are ready and willing to issue & deliver their bonds, but cannot do so on account of the pendency of this suit.

Said certificate holders, who purchased the same in good faith, & who are not parties to this suit, claim that they are entitled to their bonds, & the plaintiffs in this suit claim and ask the court so to
70 order, that they may be delivered to them in satisfaction of the judgments the bonds which were to go to the individual stockholders, to whom these certificates were issued, & who may have sold the same.

This defendant further answering says that they do not file this their answer for the purpose of interposing a defense to plaintiffs' petition any further than may be necessary to protect itself in the position which it occupies, & therefore respectfully pray that in whatever order or decree the court may make in this case, the rights of this defendant may be protected.

JOHN P. COOK,
Sol. for Def'ts.

Endorsed: Filed May 16, 1867.

WOODWARD, *Clerk.*

71 On the same day, the sixteenth day of May, came the plaintiffs, by

Grant, their solicitor, and filed in the said clerk's office the replication to the answer of the defendants George W. Stanton, jr., Blakely Wilson, and John Elliott; which replication is in the words and figures following, to wit:

U. S. C. C. for dist. of Iowa.

MARK HOWARD & JOHN WEBER
vs.
THE CITY OF DAVENPORT & ALS. } Equity.

The plaintiff, for reply to the answer of George W. Stanton, jr., John Elliott, and Blakely Wilson, say that the allegations of the bill and amendments are true, and the allegations of the answer untrue, and this he will aver and prove.

GRANT, *for Pl'ffs.*

Endorsed: Filed 16th May, 1867.

W. G. WOODWARD, *Clerk*,
By S. S. ETHRIDGE, *Deputy.*

72 And on the same day, the sixteenth day of May, came the parties, George W. Stanton, jr., Blakely Wilson, and John Elliott, and the Chicago, Rock Island, and Pacific Railroad Company, defendants, by Cook and Drury, their solicitors, and the plaintiffs, by Grant and Smith, their solicitors, and filed in said clerk's office their stipulation; which stipulation is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & JOHN WEBER & ALS.
vs.
THE CITY OF DAVENPORT & OTHERS.

In this cause the defendants George W. Stanton, jr., John Elliott, & Blakely Wilson, & Chicago, Rock Island, & Pacific Railroad Company, have answered by counsel, and not under oath. The jurat to the answer is waived; and as the answer is intended to control the legal conclusions of the bills & manner of stating the facts rather than
73 the facts themselves, most of which are in writing, it is agreed that all the allegations of the bill & amendments not denied by the answer are admitted, and as to those which are denied that the proof by one witness or by documents or writings, which are admitted, shall be sufficient.

And the following documentary proofs are to be admitted on the trial, subject to all legal objections:

1st. The petition, judgments, executions, & returns referred to in the bill & amendments, subject to all legal objections.

2nd. The meeting and proceedings of 18th & 20th Oct., 1865, & the letter of John A. Dix, of which an exhibit is attached to the bill.

3rd. The contracts and lease of the first of November, 1865, which are attached to the bill.

4th. The bonds & cupons set out in the bill, of which copies are attached to the bill.

5th. The agreement between Stanton, Elliott, & Wilson & the bond & stockholders, which is attached to the bill.

6. Articles of consolidation.

7. Decree of forecloseur.

And the same rule as to one witness shall apply on the part of defendants. The Exhibits A, B, C, D, E, Nos. 1, 2, 3, 4, are detached from the bill, answer, & deposition, & are to be treated as proved.

COOK & DRURY,
Atty's for Stanton & others, Committee.
GRANT & SMITH,
For Plaintiffs.

74 Endorsed: Filed May 16th, 1867.
W. G. WOODWARD, *Clerk.*

On the same day, the sixteenth day of May, A. D. 1867, came the plaintiffs, by Grant and Smith, their solicitors, and filed in said clerk's office, certain papers, severally marked "Exhibit A," "Exhibit B & C," "Exhibit D," "Exhibit No. 1," "Exhibit No. 2," "Exhibit No. 3," "Exhibit No. 4;" which said exhibits are in the words & figures following, to wit:

HOWARD & AL.
v.
DAVENPORT & ALS. } Exhibit A.

Proceedings of a meeting of the bond and stockholders of the Mississippi and Missouri R. R. Co., held October 18th, 1865, and statenent of Gen'l John A. Dix.

MISSISSIPPI & MISSOURI RAILROAD COMPANY.

Meeting of bond & stockholders at No. 49 Pine street, New York, October 18th, 1865.

Meeting called to order by General Dix, who nominated Mr.
75 Royal Phelps as chairman.

Mr. Phelps elected & takes the chair. Mr. R. C. Hawkins elected secretary.

General Dix addressed the meeting, making a statement of the affairs of the road. Mr. George T. M. Davis addressed the meeting, and offered the following resolution:

Resolved, That two tellers be appointed by the chair, to whom each person present and participating in the proceedings of this meeting shall report the number & character of the bonds held by himself, & also the number and character of the bonds such person represents by proxy, and the aggregate number of bonds upon which each person is entitled to vote, and also the number of shares of stock each one owns and votes upon by proxy.

Passed. The chair named the tellers in accordance with the requirements of the resolution. Mess. A. F. Aldrich and J. S. Baker appointed.

Mr. Davis offered the following resolution:

Resolved, That each bond of one thousand dollars shall be equal
76 to ten shares of stock, and each bond of five hundred dollars shall be equal to five shares of stock in voting upon any proposition before this meeting;

Which was laid on the table.

Mr. W. W. Phelps makes a statement in connection with Lord and Day—represents $507,000 1st mortgage bonds, 1st division; these bondholders asked to have the road sold out, and are determined to do it at once; will consent to no arrangement which does not recognize their claim in full.

The tellers make the following report:

Statement.

Land grants	$2,770,500
2nd mortgage construction	261,000
Oskaloosa division	151,000
1st mortgage, 1st division	120,000
2nd mortgage, 1st division	133,000
	$3,435,500

Common stock, 11,675 shares.

Mr. P. M. Myers offered the following resolution:

Resolved, 1st. That we recommend a sale of the Mississippi and Missouri railroad, its lands, equipments, and franchise, to the Chi-
77 cago & Rock Island Railroad Co., for the sum of five and a half millions of dollars, provided the mode of payment is in every respect satisfactory, and that the arrangement be closed on or before 1st November proximo.

2nd. That a committee be appointed to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Co., and that they are authorized to call a subsequent meeting of the bond and stockholders of the Mississippi and Missouri railroad, provided they deem it necessary to do so.

3rd. That Messrs. B. Wilson, G. W. Stanton, and John Elliott be appointed said committee.

Plan for the distribution of the proceeds of sale of the Mississippi and Missouri railroad to Rock Island R. R. Co. at $5,500,000.

If the offer of the Chicago and Rock Island Railroad Co., of $5,500,000, is accepted by the Mississippi & Missouri Railroad Co., there can be paid as follows:

1st mortgage bondholders, eastern division, including income bonds, & also interest up to July 1, 1865, par.

78 2nd. Mortgage bondholders, eastern division, 80 per cent. on $400,000.

Oskaloosa division bondholders, including income bonds & scrip, 62½ per cent.

Land grant bondholders, including income bonds & scrip, 70 per cent.

2nd mortgage construction bondholders, 30 per cent.

Stock, 16 per cent.

Plan for the distribution of the proceeds of sale of the Mississippi and Missouri R. R. to Rock Island R. R. Co., at $5,500,000.

$1,000,000, 1st division	@	100,	$1,000,000
214,000, do. income	"	100,	214,000
400,000, 2nd, 1st division	"	75,	300,000
590,000, 1st Oskaloosa	"	75,	442,500
3,612,000, 1st land grant, W. div	"	65,	2,347,800
695,000, 2nd mortgage over all	"	50,	417,000
266,000, income on 3d class	"	60,	159,000
84,000, income on Oskaloosa	"	70,	58,800
			$4,939,700

1 year's interest on	$1,214,000	$84,980
" " " "	990,000	52,500
" " " "	1,045,000	43,890
1 3/12 " " "	3,612,000	187,824
		369,194
		$5,378,394

Earnings to January 1st, 1866, & balance, to go to stockholders.

79 Certificates or receipts to be issued by trustees to bear interest from January 1, 1866. Rock Island company appoints one trustee; Mississippi and Missouri company appoints one trustee; bondholders appoint one trustee.

Rock Island company to foreclose at their expense. Earnings of road to go to the Rock Island co. after first January, 1866.

Mr. Hughes offered the following agreement for the reorganization of the Mississippi and Missouri Railroad Company:

Sell the road under decree of forecloseure; let it be purchased for the benefit of the creditors and stockholders assenting to this greement. Pay the assenting creditors and stockholders with bonds and stock of the new company as follows, viz: For the first mortgage, eastern division, par, in the new company's first mortgage bonds and preferred stock for all the interest accumulated up to the time of issuing the new

80 securities in preferred stock. Stockholders surrendering their stock in the old company, to receive 50 per cent. in the new company's common stock.

See comparative statement of securities below:

	Old bonds.	New bonds.
First mortgage, eastern division	$1,000,000	$1,000,000
Second " " "	400,000	200,000
Oskaloosa division	590,000	295,000
First mortgage land grant	3,612,000	1,806,000
Second " " "	695,000	347,500
Income bonds	560,000	280,000
Total	$6,857,000	$3,928,500

First mortgage bonds reserved for the completion of the road to Des Moines, 41 miles, & for additional rolling stock	$1,571,500
Total amount of new mortgage covering road & land grant	$5,500,000
Preferred stock of new company	3,500,000
	$9,000,000
Common stock of new company	3,000,000
	$12,000,000

Length of road to Des Moines 227 miles, including Oskaloosa branch. Land grant, 650,000 acres.

81 JOHN P. YELVERTON,
Pres't of Bank North America,
FREDERICK P. JAMES, 45 *Wall street,*
DAVID M. HUGHES, 125 *William street,*
Trustees for assenting creditors.

NEW YORK, *June 1st*, 1865.

I hereby assent to the above agreement, and agree to surrender —— —————— bonds and ———— shares stock, and to receive the said trustees' certificates for the same.

———— ————

Parties in interest, who have not yet assented to this agreement, can do so at any time previous to August 1st, 1865.

Office of Trustees, 25 William street, Room No. 9.

Time of assent extended to October 1st, 1865.

Mr. Wilson offered the following:

NEW YORK, *August* 5, 1865.

The accompanying plan of reorganization of the Mississippi and Missouri Railroad Company has been approved by the executive committee of the board of directors, and is now submitted to the considera-
82 tion of the bond and stockholders.

If adopted by them, and fully carried out, it will place the company on a very strong baisis, and it leaves a debt of only $3,000,000, first mortgage bonds, with an annual interest charge of $210,000, or something less than the net earnings of the road last year, which will be largely increased by its completion to Des Moines, for which and its proper equipment this plan fully provides. The appropriation of the earnings, or so much thereof as may be necessary to that purpose, will enable the company to meet the future payments of interest with undeviating regularity and promptness.

It is very important, in the reorganization of the company, to provide not only for the completion of the road Des Moines, but also, as far as practicable, for its further extension towards Council Bluffs, at which point it will connect with the Union Pacific railroad. This plan will leave applicable to that purpose, first mortgage bonds and preferred stock to the amount of $1,700,000, as is shown by the accompanying statements.

At an average of less than $10 per acre, the land grant, which,
83 on completion of the road to Des Moines, will probably amount to 650,000 acres, will ultimately extinguish the preferred stock, and the total capital of the company will then stand as follows:

First mortgage bonds	$3,000,000
Common stock	3,500,000
	$6,500,000

and the latter undoubtedly prove one of the most productive railroad investments in the country.

Statement.

New first mortgage bonds		$3,000,000
Less first mortgage, eastern division	$1,000,000	
Income bonds issued for funded cupons	214,000	
Arrears of interest & cupons due 1st January, 1866	84,980	
		$1,298,980
		$1,701,020
New preferred stock		$6,000,000
Second mortgage, eastern division	$400,000	
First mortgage land grant	3,612,000	

50 per cent. second mortgage land grant, $695,000	347,500	
50 per cent. income bonds, 266,000	133,000	
10 per cent. cash payment on common stock.	297,180	
		4,789,680
Unappropriated balance		$1,210,320
84 New common stock		$3,500,000
Old stock	$2,971,800	
50 per cent. second mortgage land grant	347,500	
50 per cent. income bonds	133,000	
		3,452,300
		$47,700

New bonds and stock applicable to extension of road.

First mortgage bonds	$1,701,020
Preferred stock	1,210,320
Cash payment on common stock	297,180
	$3,208,520
Estimated cost of completion to Des Moines, and equipment	1,500,000
Balance applicable to road west of Des Moines	$1,708,500

Plan of organization.

Sell the road under forecloseure of the first or second eastern division, and first land grant mortgages. Let it be purchased for account of the assenting bond & stockholders, and a new company organized by them with the following stock & bonds:

$3,000,000 7 per cent. bonds, redeemable in ———— years from date of issue, interest payable semi-annually in the city of New
85 York, secured by mortgage on main line from Davenport to Des Moines, and branch from Davenport to Muscatine.

$6,000,000 preferred stock, secured by land grant, the proceeds of sales thereof to be applied to its extinguishment by purchase in the market, with the right to the company of calling it in from the holders at 110 per cent.

$3,500,000 common stock.

$12,500,000

The preferred stock to be entitled to dividends of seven per cent, in each and every year after the completion & equipment of the road to Des Moines, to be paid in full, out of the earnings, before any part thereof can be applied to dividends of the common stock.

The net earnings of the road to be appropriated as follows:

1st. To interest on bonds.

2nd. To dividends of 7 per cent. per annum on preferred stock.

3rd. To dividends of seven per cent. per annum, if earned in the year on common stock.

4th. Any surplus to be divided pro rata between the two classes of stockholders, or appropriated to construction of road from Des Moines to Council Bluffs.

86 No second mortgage to be put on the road east of Des Moines, without the consent of the holders of two-thirds of the preferred stock.

Issue to the parties to this agreement, in exchange for their bonds and stock of the old company, those of then new, as follows:

For first mortgage, eastern division, new first mortgage bonds for principal & interest to 1st of January, 1866, including income bonds issued for old cupons funded.

For second mortgage, eastern division, and first mortgage land grant, preferred stock for the principal of the bonds.

For second mortgage land grant & income bonds, preferred stock for 50 per cent. of the principal of the bonds, and common stock for balance.

For stock of old company, share for share of new stock on payment of ten per cent. in cash, for which issue preferred stock.

Mr. Bogart moved that the whole matter of reorganization & sale of the Mississippi and Missouri railroad be laid on the table, and that the scales of division of purchase-monies offered by the Rock Island railroad be printed for distribution among the stockholders & bondholders.

87 Passed.

Mr. Perkins offered the following resolution:

Resolved, That the executive committee of the Mississippi and Missouri railroad be requested to submit a report, at the next meeting, as to the advisability of selling the railroad.

Passed.

Meeting adjourned to Oct. 20th, 1865, at one o'clock p. m., at same place.

OCTOBER 20*th*, 1865.

Meeting held pursuant to adjournment—Mr. Royal Phelps in the chair; Mr. R. C. Hawkins, sec., present.

The secretary read the minutes of the last meeting, which were approved.

The executive committee report in accordance with the resolution of Mr. Perkins.

Report.

In accordance with the request contained in the resolution adopted on the 18th inst., at the meeting of the bond & stockholders of the Mississippi & Missouri Railroad Company, the executive committee of said company, after the fullest consideration that they can give
88 to the subject, have arrived at the conclusion that a sale of the road to the Chicago and Rock Island Railroad Company, at five millions five hundred thousand dollars, is advisable, unless at least one million five hundred thousand dollars can be immediately provided by the bond & stockholders for the completion and equipment of the road to Des Moines, a distance of about forty-two (42) miles.

The executive committee, however, base their recomendation of the sale upon the condition that the distribution of the $5,500,000 is made in accordance with the scale hereto attached.

JNO. A. DIX, *Pres't*,
G. W. STANTON,
B. WILSON,
JOHN ELLIOTT,
GEO. T. M. DAVIS,
Executive Committee.

1st mortgage, eastern division	$1,000,000	
Income bonds	214,000	
Interest July 1st, 1865	42,490	
		$1,256,490
2nd mortgage, eastern division, $400,000, @ 80c		230,000
Oskaloosa division bonds	$590,000	
Income do.	73,000	
89 Ditto. scrip	2,939	
	$665,939, @ 62½c.	416,212
Land grant division bonds	$3,612,000	
Income do	253,000	
Do. scrip	12,550	
	$3,878,550, @ 70 c.	2,714,635
2nd mortgage construction bonds	691,000	
Scrip	2,764	
	693,764, @ 30 c.	208,129
Capital stock	$3,452,500, @ 16 c.	552,400
		$5,467,866

After which, Mr. Davis addressed the meeting, advocating the passage of the report, making a full and clear exposition of the condition of the road.

Mr. P. M. Myers offered the following resolution:

Resolved, That the report of the executive committee be accepted & the recommendation adopted.

Mr. Bogart offered the following resolution:

Resolved, That the report of the executive committee be accepted.

Passed.

Mr. E. H. Mead offered the following amendment:

90 *Plan for the distribution of the proceeds of sale of the Mississippi & Missouri R. R. to Rock Island R. R. Co., at* $5,500,000.

$1,000,000, 1st division	at 100	$1,000,000
214,000, do. income	" 100	214,000
400,000, 2nd, 1st division	" 75	300,000
590,000, 1st Oskaloosa	" 55	324,500
3,612,000, 1st land grant, W. div.	" 75	2,709,000
695,000, 2nd mortgage over all	" 30	208,500
266,000, income on 3d class	" 75	199,500
84,000, income on Oskaloosa	" 55	46,200
		$5,001,700
1 year's interest on $1,214,000		84,980
		$5,086,680

Earnings to January first, 1866, and balance, to go to stockholders. Certificates or receipts, to be issued by trustees, to bear interest from January first, 1866. Rock Island co. appoints one trustee: Mississippi & Missouri co. appoints one trustee; bondholders appoint one trustee.

Rock Island co. to foreclose at their expense. Earnings of road to go to Rock Island co. after first January, 1866.

Not passed, voted down.

Mr. Wadsworth offered the following amendment:

91 *Plan for the distribution of the proceeds of sale of the Mississippi & Missouri R. R. to Rock Island R. R. Co., at* 5,500,000.

$1,000,000, 1st division	at	100	$1,000,000
214,000, do. income	"	100	214,000
400,000, 2nd, 1st. division	"	75	300,000
590,000, 1st Oskaloosa	"	75	442,500
3,612,000, 1st land grant, W. div	"	65	2,347,800
695,000, 2nd mortgage over all	"	60	486,500
266,000, income on 3d class	"	60	159,600
84,000, income on Oskaloosa	"	70	58,800
			5,009,200
1 year's interest on $1,214,000		$84,980	
" " " " 990,000		52,500	
" " " " 1,045,000		43,890	
$1\frac{2}{12}$ " " " 3,612,009		187,824	369,194
			$5,378,394

Earnings to January first, 1866, & balance, to go to stockholders. Certificates or receipts, to be issued by trustees, to bear interest from January 1, 1866. Rock Island co. appoints one trustee; Mississippi & Missouri co. appoints one trustee; bondholders appoint one trustee. Rock Island co. to foreclose at their expense. Earnings of road to go to Rock Island co. after 1st January, 1866.

92 Not passed, voted down.

Mr. P. M. Myers offered the following resolution:

Resolved, That the recomendation of the executive committee be adopted.

Passed.

Judge Emott offered the following resolution:

Resolved, That a committee be appointed to arrange the mode and terms of payment with the Chicago & Rock Island Railroad Company, and the details of the sale authorized by this meeting; that Messrs. B. Wilson, G. W. Stanton, and John Elliott be appointed such committee; and that said committee be instructed to make an arrangement with some trust company, to receive the bonds and stock of the parties assenting, and issue certificates therefor, setting forth what the holder thereof is entitled to receive.

Passed.

The sale & the distribution of the proceeds recomended by the committee having been approved, General Dix said that he had prepared a statement, showing the circumstances which had induced him

93 to acquiesce in the course which had been adopted, and which he believed to be a matter of necessity. He had taken no part in the plam of distributing the proceeds of the sale, having been willing to leave the matter to the committee, who, he believed, had acted disinterestedly, equitably, and fairly. He was himself, perhaps, as great a sufferer, in proportion to his interest in the securities of the company, as any gentleman present, as he was not only a stockholder & bondholder, but he had a considerable amount of repudiated county and city bonds.

He would not delay the close of the proceedings by reading the statement, but proposed to publish & distribute it for the information of the bondholders & stockholders.

Mr. Henry Day offered the following resolution:

Resolved, That Gen. Dix be requested to print his statement.

Passed.

Mr. John Elliott offered the following resolution:

Resolved, That the proceedings at the meetings be printed & added to General Dix's statement.

Passed.

Adjourned sine die.

94 NEW YORK, *October* 20, 1865.

To the stockholders & bondholders of the Mississippi & Missouri Railroad Company:

GENTLEMEN: The executive committee of the company, in pursuance of your resolution of the eighteenth instant, asking their opinion in regard to the sale of the property and franchises of the company to the Chicago & Rock Island Railroad Company for the sum of five million five hundred thousand dollars, having reported in favor of the measure, the undersigned deems it his duty, having been president of the former company from its organization, to state the reasons which have induced him to concur in their report.

The company received from the contractors, and commenced operating on the first of July, 1856, sixty-seven miles of road—fifty-five from Davenport, the eastern terminus on the Mississippi River, to Iowa City, and a branch of twelve miles to Muscatine. It was a season of great commercial activity, and the earnings of the first six months amounted to $184,193 82. Out of these, the company, after defraying the operating expenses, amounting to forty per cent, paid the interest on its
95 bonds, and a dividend of four per cent. on its stock. The next six months were less productive, and the earnings for the year ending 30th June, 1857, including the above-mentioned six months, were only $299,839 25. The commercial revulsion of 1857 followed; and the earnings for the year ending 30th June, 1858, fell to $172,351 72. On the first January, 1859, the company opened forty miles of road on the Oskaloosa line, from Muscatine to Washington; but notwithstanding this addition, the earnings again fell off to $172,197 37 for the year ending the 30th of June, 1859. The bonded debt, by the construction of these forty miles of road, was increased by the sum of $590,000; and although the gross earnings for the year ending June 30th, 1860, were $207,688 97, the net earnings for the year were only $97,889 45, while the annual interest on the bonded debt was $145,300. The earnings for the six months ending the 31st December, 1860, were $127,045 51, the earnings for the year ending the 31st December, 1861, were $232,784 19, and the nett earnings $93,798 90; while the annual interest on the bonded debt of the company was constantly increasing by the issuing of land grant bonds for the construction of the road on the main line westward from Iowa City to Grinnell.

96 Under these circumstances, the company was compelled to suspend the payment of the interest on its bonds; and in October, 1862, an arrangement was made with the bondholders to fund their cupons to the first July, 1864.

The earnings for the subsequent years are as follows:

For 1862 ..... $270,527 19

"	1863	348,618 34
"	1864	603,209 32
"	1865, (nine months)	527,884 03

Heretofore the cost of operating the road since the first year has varied but little—but sixty per cent. of the earnings. During the present year it has equallied sixty-five per cent., and there is no hope of reducing this ratio for some time to come.

The road has now been nearly ten years in operation; bridges are to be rebuilt, and ties and iron to some extent to be replaced.

In the construction of the road a very heavy bonded debt has been created.

The company was required, in order to save its land grant, to complete its road within a limited time; and it was compelled to dispose of its land grant bonds, its only resource for raising money, at 60 per cent. of their par value; thus adding enormously to the aggregate of
97 its debt, and making the cost of the road west of Iowa City forty per cent. more than it would have been if the bonds could have been disposed of at par.

The undersigned regrets to state that the credit of the company and its ability to raise money were greatly impaired by the conduct of certain counties and cities in Iowa, which had, after being authorized by a popular vote, taken stock, and issued their bonds in payment of these subscriptions. The bonds, amounting to more than a million dollars, were for the most part guaranteed by the company, and were sold in the Atlantic States. After the portions of road, for the construction of which they were issued, were completed (and in some instances before), they were all repudiated; and the company not having the means of paying the interest on its own bonds, was, by the default of these counties and cities, involved in the further discredit of failing to fulfil its guaranty of theirs. Thus, the municipal corporations referred to, after having invited capital into the State by the offer of their credit, after getting the railroad, by means of which their property has been greatly increased in value, have not scrupled to violate their engagements, equally bind-
98 ing on them in honor and good faith, and [have], by discrediting the company whose guaranty they accepted to secure the sale of their bonds, have been among the principal authors of the obstacles it has encountered, and the embarrassments in which it is now involved, and also the chief impediment to the further improvement of their own section of the country.

The bonded debt of the company is now $6,851,754 64, and the annual interest $483,680. There is also due on account of unpaid cupons the sum of $293,497 30. The earnings of the current year will probably exceed $760,000; but the expense of the road will be so heavy, there is likely to be a defficiency of $200,000 in the nett earnings for the payment of the annual interest, making more than half a million of unpaid cupons to be provided for on the first of January next. It is obvious that this defficiency cannot be met by any financial recourses which the company can command. It is, therefore, driven to the neesessity of selling the road, or reorganizing on a baisis which will furnish the means of constructing forty miles of road, and of extending it to Des Moines, the capitol
99 of Iowa, and deferring to a future time the payment of existing liabilities. A reorganization involves the necessity of foreclosing one or more of the mortgages on the road, of raising a sum of at least of a million and a half of dollars, and of incurring both expense & delay; and it is in view of all these embarrassments, that the undersigned con-

curs with all the other members of the executive committee, in recommending the sale to the Chicago and Rock Island Railroad Company. He is satisfied that the sum offered ($5,500,000) is less than the actual value of the road to the purchaser; but he is by no means as well satisfied that it is worth more, under existing embarrassments, to the seller. It is beyond question, in connection with the Union Pacific Railroad Company, destined to become one of the most valuable & productive railway lines in the United States; and nothing but absolute necessity would justify the proposed sale. But the company is in the unfortunate condition of an individual having a valuable property which he has not the means of developing, and the full productiveness of which can only be secured by the expenditure of a larger sum of money than he can command.

100 The executive committee name the sum of a million and a half of dollars as neesessary to extend the road to Des Moines & equip it. But to complete their extension of the road, to equip the whole road as it should be, and put it in proper order, will require at least two millions. It has now but 13 locomotives, 9 passenger cars, 92 freight cars, and 50 platform cars on the entire road of 184 miles. To construct and equip the road to Des Moines (41 miles), supply defficiencies in the present equipments, and put the road in condition to be economically operated, the following is believed to be a fair estimate. A more detailed estimate would no doubt be greater in amount:

Extension to Des Moines, 41 miles	$1,250,000
Rebuilding bridges, reducing two heavy grades, replacing iron & ties worn out	400,000
Additional indispensable equipments	500,000
	$2,150,000

If this amount could be provided, and the road continued to Des Moines, the earnings would, in all probability, be doubled, while the interest on the bonded debt, even if the money could be obtained at par, would be increased to about $650,000. The company has no securities to

101 offer for raising money, except $3,388,000 of bonds, which may be issued under the land grant mortgage; but these, at present prices, would yield less than a million and a half of dollars, while the bonded debt would be increased by thus sacrificing them, to more than ten millions. In such an increase, it is difficult to foresee any result but an insolvency still more disastrous to all concerned.

Although the company has 480,000 acres of valuable land, at least three-fourths of the whole amount lie more than forty miles west of Des Moines, and more than eighty miles west of the present terminus of the road in Jasper County. These lands are now wholly unavailable. They cannot be fully brought into profitable use until the company has constructed from 100 to 150 miles more of road, at an expense of four or five millions of dollars. It is the manifest hopelessness of obtaining so large an amount of money, and the improbability even of raising a sufficient amount to extend the road to Des Moines, that have reconciled the undersigned to the painful alternative of selling.

If the stock and bondholders could advance a million and a

102 half of dollars to extend the road to Des Moines, it is not doubted that their interests would be better secured than by a sale. But is very questionable whether such a measure could be carried out. The first mortgage bondholders on the eastern division are aking for the in-

terest due them, and are, indeed, preparing to bring a suit to forcloseure, and if they were quieted by payment, it is not unlikely that the holders of other bonds would be equally impatient, and adopt legal remedies to enforce their claims.

By the proposed sale, the stockholders will be the greatest sufferers; but a forecloseure by the bondholders would cut them off entirely, and their only chance of realizing anything on their stock seems to be in the proposed sale, and the plan recommended by the executive committee for distributing the proceeds, which will give them sixteen per cent. The undersigned is himself a holder of stock, for which he paid 80 per cent. to the company, when it was constructing the first division, & he is, therefore, not likely to underrate the sacrifice which other stockholders are asked to make.

In conclusion, the undersigned can, from his long connection
103 with the affairs of the company, confidently assert that the embarrassments in which it is involved, have not been brought in by extravagance or mismanagement, but by the low price at which its bonds have been negotiated, the inadequacy of the earnings of the road to meet its annual liabilities during many consecutive years of commercial depression, & other causes, which have contributed to impair its credit.

Respectfully,

JOHN A. DIX.

Endorsed: Exibit A, 69, Eq.
Filed 16 May, 67.

W. G. WOODWARD, *Clerk.*

HOWARD & ALS. } Exhibits B & C.
v.
DAVENPORT & ALS. }

Memorandum of understanding had and agreement made, this first day of November, one thousand eight hundred and sixty-five, between the Mississippi & Missouri Railroad Company and the Chicago & Rock Island Railroad Company, in pursuance of certain resolutions,
104 passed by a meeting of the bondholders & stockholders of the Mississippi & Missouri Railroad Company, held in the city of New York, on the twentieth day of October, 1865.

ARTICLE I. The Mississippi and Missouri Railroad Company will take proper steps, with all possible dispatch, to cause the mortgages upon its line of road, its lands, depot, equipments, &c., &c., to be foreclosed, and its entire property, real and personal, sold, so that the purchaser shall be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago and Rock Island Railroad Company may designate to become the purchaser and owner thereof.

ARTICLE II. The Chicago and Rock Island Railroad Company will, within one year from December 1st, 1865, and as much earlier as the property aforesaid, if so sold and purchased, cause to be incorporated a company in the State of Iowa, under the general law of said State, which shall purchase the said property for the sum of five millions five
105 hundred thousand dollars, and complete the said road to Des Moines; and the Mississippi and Missouri Railroad Company agree that the person or persons who shall become the purchaser or purchasers under the forecloseures aforesaid shall sell the said property to such company or corporation for the sum and upon the terms herein stated and set forth.

ARTICLE III. The Chicago and Rock Island Railroad Company will use all possible exertion to procure the neesessary power and authority, legislative and otherwise, to consolidate the said Chicago and Rock Island Railroad Company, and the said company so to be incorporated in Iowa, so as to make one company, whose line of road, under some other name, shall extend from Chicago to Des Moines, & include the branch of the Mississippi & Missouri railroad to Washington, which is now called "the Oskaloosa branch."

ARTICLE IV. If the consolidation aforesaid can be perfected, then the Chicago and Rock Island Railroad Company agrees that said consolidated company can issue bonds in sums of one thousand dollars and five hundred dollars, to the amount of nine million dollars, payable in
106 twenty-five years from date, in the city of New York, bearing interest at seven per cent. per annum, payable half-yearly in said city, and shall secure the payment thereof by a mortgage upon all the railroads, franchises, depots, station grounds, and equipments of said consolidated company from Chicago to Des Moines and the Oskaloosa branch, and shall create a sinking fund sufficient to retire the bonds at maturity. Of this sum there shall be paid in the bonds aforesaid—

For the purchase of the property of the Mississippi and Missouri Railroad Company	$5,500,000
To complete the road to Des Moines	1,500,000
To pay off the present mortage on the Chicago & Rock Island railroad	1,400,000
To pay off the bonds of the Mississippi River bridge	600,000
	$9,000,000

ARTICLE V. If from any cause the consolidation provided for cannot be made & perfected, then the [the] understanding and agreenent is that the said company provided for in Article II, upon the purchase of the property aforesaid of the Mississippi and Missouri Railroad Company, shall issue its bonds in sums of one thousand dollars and five hun-
107 dred dollars, interest and principal payable as provided in Article IV, to the amount of seven million dollars, secured by a mortgage upon the entire road and its franchises, from Davenport to Des Moines, and upon the Oskaloosa branch, the depot grounds, station buildings, equipments, & all the lands which said company may acquire by the purchase aforesaid; and the Chicago and Rock Island Railroad Company agrees that it will guarantee the payment of the interest and principal of the said seven millions dollars of bonds so to be issued, five millions five hundred thousand dollars for the purchase of the property of the Mississippi & Missouri Railroad Company, and one million five hundred thousand dollars for the completion of the road to Des Moines.

ARTICLE VI. It is agreed that the Chicago & Rock Island Railroad Company shall have the posession of and operate the Mississippi and Missouri railroad from and after the first day of December, 1865, as provided for in another agreement bearing even date with this, and that the interest upon the said sum of five millions five hundred thou-
108 sand dollars shall commence on said first day of December, 1865, which interest shall be paid in cash at the time of the transfer of the property aforesaid shall be made to the company, as provided for in Article II.

ARTICLE VII. It is agreed and understood, that unless the Mississippi & Missouri Railroad Company have procured the forecloseure & sale

aforesaid by the first day of December, 1866, this agreement shall be null and void, unless the Chicago & Rock Island Railroad Company shall agree to extend the time for such sale to be had and procured.

In witness whereof, these presents are signed by the president of each road this first day of November, one thousand eight hundred and sixty-five.

JOHN A. DIX,
President Miss. & Mo. R. R. Co.
C. W. DURANT,
President Chicago & R. I. R. R. Co.

Memorandum of an agreement made this first day of November, A. D. one thousand eight hundred & sixty-five, between the Mississippi and Missouri Railroad Company, of the first part, and the Chicago and Rock Island Company, of the second part.

The party of the first part covenants & agrees with the party of the second part to yield to the said Chicago & Rock Island Railroad Company the posession, control, & management of the Mississippi & Missouri railroad, the Oskaloosa, and all other branches, its and their depots, shops, offices, or equipments, from the first day of December, A. D. one thousand eight hundred and sixty-five, to the first day of December, A. D. one thousand eight hundred and sixty-six, upon the terms and conditions hereinafter contained. And the Chicago and Rock Island Railroad Company agrees to accept the said Mississippi & Missouri railroad, with the Oskaloosa and other branches as aforesaid, as the agent and attorney in fact of the said Mississippi & Missouri Railroad Company, and as such agent or attorney to operate & manage the said road, with the right, priviledge, and understanding that the Chicago and Rock Island Railroad Company may and shall employ and appropriate, to the
110 preservation and repair of the said Mississippi and Missouri railroad, its tracks, bridges, buildings, etc., that sum taken from the earnings of the last-mentioned road, which in the opinion of the superintendant of the Chicago and Rock Island Railroad Company is neesessary and proper. The Chicago & Rock Island company further covenants to operate the Mississippi and Missouri railroad property, and to keep books of account showing all the receipts and expenditures connected with the same, which books shall be open to the inspection of any or all officers of the Mississippi & Missouri Railroad Company. It is also understood and mutually agreed, that if from any cause an agreement made between the parties to these presents of the same date, in relation to the forecloseure of the mortgages, and a subsequent sale of the Mississippi and Missouri railroad, should fail to be carried out, then, and in that case, the Chicago and Rock Island Railroad Company will restore the posession and control of the Mississippi and Missouri railroad to the company of that name, or the party lawfully entitled thereto, and will account for and pay over all moneys in its hands, or the hands of its servants, that shall have been received from the earnings of the
111 Mississippi and Missouri railroad, and not already, at the date of such restoration, thereon expended.

And by these presents the Mississippi and Missouri Railroad Company doth hereby constitute the Chicago & Rock Island Railroad Company its lawful attorney, to operate and manage the Mississippi and Missouri railroad from the first day of December, A. D. one thousand eight hundred and sixty-five, to the first day of December, A. D. one thousand eight hundred and sixty six, hereby ratifying & confirming every-

thing that the said Chicago and Rock Island Railroad Company may or shall lawfully do under these presents.

In witness whereof, each party to this agreement hath caused its corporate seal to be attached to these presents, and attested by its secretary the day and year first above written.

EBENEZER COOK,
Secretary M. & M. R. R. Co.
F. H. TOWS,
Secretary C. & R. I. R. R. Co.

112 Endorsed: Exhibits of contracts Miss. & Mo. R. R. Co. with Ch. & R. I. R. R. Co.—B & C.

Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

Agreement between stockholders & bondholders of the Mississippi and Missouri Railroad Company and George W. Stanton, jr., John Elliott, and Blakely Wilson, committee.

Agreement made between Peter M. Myers and others, subscribing holders of the stock and bonds of the Mississippi and Missouri Railroad Company, of the first part, and George W. Stanton, junior, John Elliott, and Blakely Wilson, their committee, of the second part.

Whereas, at a meeting held in the city of New York, on the 20th day of October, one thousand eight hundred and sixty-five, by the said holders of the stock and bonds of the Mississippi and Missouri Railroad Company, the parties of the second part were named a committee for all parties in interest, and instructed to sell the said railroad, its franchises, and equipment, for five millions five hundred thousand dol-
113 lars, and to distribute the proceeds of such sale in the amounts and according to a scale of apportionment herein after set forth;

And whereas, in the furtherance of this object an agreement was made between the Chicago and Rock Island Railroad Company and the Mississippi and Missouri Railroad Company, dated the first day of November, one thousand eight hundred & sixty-five, whereby the last-mentioned company agreed to sell and transfer its road, lands, and other property free and clear of all incumbrance;

And whereas the said committee, to effectuate this clearance and sale, are about to foreclose the various mortgages in order subsequently to convey a clear title to the purchaser or purchasers thereof:

Now this agreement witnesseth, that the holders of stock and bonds whose names are hereunto subscribed hereby under their hands ratify and confirm the authority given to the said committee at the meeting aforesaid, and agree to hold them, the said committee, free and harmless from any personal liability or responsibility other than the responsibility to act fairly, honestly, or in good faith in the discharge of their
114 trust. The said stockholders and bondholders jointly and severally consent to the foreclosure of any & all the mortgages made by the Mississippi and Missouri Railroad Company, to the sale of the road, franchise, lands, &c. &c., under such foreclosure, and agree to surrender their bonds and certificates of stock, upon signing these presents, into the hands of the Union Trust Company of New York, to be held by the said trust company as the agent of the said committee, and to be used as the said committee shall see fit in carrying out the sale and foreclosure aforesaid, with the proviso only that in case the said proceed-

ings to foreclose shall fail of success, or the sale to be consumated, the said bonds and certificates of stock shall be restored to the subscribing holders or those who through them have become entitled to them.

And the committee aforesaid hereby covenant and agree to use all dilligence in foreclosing the mortgages now encumbering the title of the Mississippi and Missouri Railroad Company to its property; to convey the same after such forecloseure, as more fully set forth in the agreement between the Chicago and Rock Island Railroad Company and
115 the Mississippi and Missouri Railroad Company, hereinbefore referred to, for five millions five hundred thousand dollars, and to distribute the same among the holders of stock and bonds according to the folowing scale, viz: To the holders of bonds secured by the first mortgage of the eastern division of the Mississippi & Missouri railroad, par, for principal debt and income bonds and interest accrued to July 1, 1865; to the holders of bonds secured by a second mortgage of the last-mentioned division, eighty per cent. of the principal debt; to the holders of bonds secured by a mortgage on the Oskaloosa division and income bonds and scrip, sixty-two and a half per cent. of principal debt; to the holders of bonds secured by what is known as the land grant first mortgage income bonds and scrip outstanding, seventy per cent. of the principal debt; to the holders of bonds secured by the second construction mortgage so called and scrip, thirty per cent. of the principal debt; and to the holders of stock, sixteen per cent. of the par value of their shars; and to distribute the balance of purchase-money and the interest thereon at seven per cent., from December 1st, 1865, if any remain after discharging the expenses of forecloseure and sale,
116 among the holders of stock, and bonds according to the scale of apportionment hereinabove mentioned; the said committee agreeing to distribute among the said holders of stock and bonds the proceeds of the sale in the form in which proceeds are received, and to receive such proceeds only in the form of money or bonds secured by a mortgage on the consolidated properties of the Chicago and Rock Island Railroad Company, and the Mississippi and Missouri Railroad Company, or of bonds secured by a mortgage on the property of the Mississippi and Missouri Railroad Company and guaranteed by the Chicago and Rock Island Railroad Company.

And the said committee further agree to receive through the Union Trust Company the bonds, scrip, and certificates of stock held by the parties assenting to this agreement, to deposit the same for safe-keeping in the said Union Trust Company of New York, and to issue through it a proper receipt, which shall entitle the bearer to the rights of such bonds or stock in the fund to be distributed under the terms and conditions hereinbefore mentioned.

117 Witness the hands of the said Stanton, Wilson, and Elliott, committee, and of Peter M. Myers, and the other holders of stock and bonds assenting hereto.

Endorsed: Exhibit D.
Filed 16, May, '67.

W. G. WOODWARD, *Clerk.*

(*In pencil:*) (Ex. No one cannot be found.)

NEW YORK, ———, 186–.

No. ——.

The Union Trust Company of New York acknowledges the receipt

from ——— ———, of certificate No. ——, showing that the said ——— ——— is entitled to ——— shares of the capital stock of the Mississippi and Missouri Railroad Company, amounting to ——— dollars principal. To be held subject to an agreement made by the said ——— ———, and other holders of the stock and bonds of the said railroad company, with George W. Stanton, jr. John Elliott, and Blakely Wilson, their committee, dated November 1, 1865.

This receipt entitles the bearer to ——— dollars in the new
118 bonds to be issued, and interest thereon at the rate of seven per cent. per annum from December 1, 1865, less the excess, if any, of the cost of forecloseure, sale, & other expenses of the committee over and above the $32,134 unappropriated balance of $5,500,000 derived from the sale of said road, and any and all the rights of the said ——— ———, under and by virtue of the agreement aforesaid.

Dated November 1, 1865.

——— ———, *President.*

——— ———, *Secretary.*

(*Stub.*)

Receipt No. ——— entitles ——— ———, or bearer, to ———, in the new bonds to be issued in exchange for ——— shares of stock, amounting to $. No. of certificate, .

Received the receipt above described ———, 1865.

——— ———.

Endorsed on receipt:

It is agreed to sell the Mississippi and Missouri railroad, its
119 franchise, land, &c., &c., when title is perfected, for $5,500,000, to be distributed as follows:

First mortgage eastern division bonds	$1,000,000			
Income bonds do. do. do.	214,000			
Interest to July 1, 1865	42,490	at 100	per cent.,	$1,256,490
Second mortgage eastern division	400,000	@ 80	" "	320,000
Mortgage bonds Oskaloosa division	590,000			
Income do. do. do.	73,000			
Scrip convertible into bonds	2,939	at 62½	per cent.,	416,212
First mortgage land grant bonds	3,612,000			
Income do. do. do.	253,500			
Scrip convertible into bonds	12,550	at 70	per cent.,	2,714,635
Second mortgage construction bonds	691,000			
Scrip convertible into bonds	2,764	at 30	per cent.,	208,129
Capital stock	3,452,000	@ 16	"	552,400
				$5,467,866
Reserved for pro rata distribution after deducting expense of forecloseure, sale, &c				32,134
				$5,500,000

Exhibit No. 2. Howard & als vs. Davenport and als.
Filed 16th May, '67.

W. G. WOODWARD, *Clerk.*

120 Articles of consolidation made and entered into the twentieth day of August, one thousand eight hundred and sixty-six, by and between the Chicago and Rock Island Railroad Company of the first part, and the Chicago, Rock Island, and Pacific Railroad Company of the second part.

Whereas the said parties of the first part are a railroad company organized and made a body corporate and politic under and by virtue of the laws of the State of Illinois, and the said parties of the second part are a railroad company organized and made a body corporate & politic under and by virtue of the laws of the State of Iowa;

And whereas the parties of the first part and second parts have mutually agreed, and do mutually agree, to consolidate their property and stock with each other, and to merge and consolidate their respective companies with each other, upon the terms and conditions hereinafter stated, declared, and contained, and are authorized by the laws of the States of Illinois & Iowa so to do;

121 And whereas all the proceedings for the purpose of such consolidation have been and are fixed and regulated by the by-laws of the said two respective companies; and these present articles are framed & executed in pursuance of and in conformity to such by-laws; and whereas the terms of such consolidation have been approved by the written consent of a majority of the stockholders in interest of each of the said two above-named companies, and the said written consents have been filed in the offices of the said respective companies; and whereas the written consent of all the stockholders of the said Chicago and Rock Island Railroad Company and of the said Chicago, Rock Island, and Pacific Railroad Company residing in the State of Illinois, to such consolidation has been obtained and filed in the respective offices of the said last-mentioned companies; and whereas more than three-fourths of all the stockholders in amount of the said Chicago, Rock Island, & Pacific Railroad Company have given their written consent to such consolidation, and said last-mentioned consents have been filed in the office of the said last-mentioned company.

122 Now, these presents witness, that the said parties of the first and second parts, in consideration of the mutual execution of these presents, do hereby merge and consolidate the stock of their respective companies and make one joint-stock company of the said two respective railroads, and do hereby consolidate their respective stock and property, and also their respective companies with each other, and do hereby unite their said two respective corporations, & constitute them into one consolidated corporation, to be called and known by the corporate name of the Chicago, Rock Island, and Pacific Railroad Company; and the said parties of the first and second parts, for the consideration aforesaid, do mutually grant, agree, and declare that the name of the said consolidated company by these presents formed is and shall be the Chicago, Rock Island, and Pacific Railroad Company, by which name the same shall be a body corporate & politic, have a common seal, & contract and be contracted with, sue and be sued, implead and be impleaded, and posess all the powers, franchises, immunities, property, rights, and priviledges now enjoyed or held by the said parties of the first part, or the said parties of the second part, or which either of said companies,

123 parties of the first part and second parts, at the execution of these presents has or is entitled to by virtue of their respective charters and under and by the laws of the respective States of Illinois and Iowa relating or applicable to them respectively; and the said parties of the

first and second parts, for the consideration aforesaid, do hereby, mutually and respectively, grant, bargain, sell, release, convey, assign, transfer, and set over, unto the said consolidated company, the Chicago, Rock Island, and Pacific Railroad Company, all and singular their several and respective railroads, railroad lands, rights of way, stations, station grounds, lands, lots, bridges, cars, locomotives, rolling stock, furniture, tools, machinery, iron, fuel, timber, stone, materials, and goods and chattels, and all and singular their several and respective bonds, bill, notes, accounts, demands, moneys, & things in action, and all and singular their several and respective estates, property, & effects, real & personal, movable & immovable, at law and in equity, wheresoever situated and howsoever held, and all and singular their several & respective franchises, priviledges, immunities, and corporate rights, and do mutually agree and declare the same from the execution of these presents, and henceforth to be vested in & held and posessed by the said consolidated company, and its successors and assigns forever, to and for its own use, benefit, and behoof, to all intents & purposes; and the said parties of the first and second parts, for the consideration aforesaid, do hereby mutually grant and agree that all and singular the debts, obligations, and liabilities whatsoever of the said parties of the first and second parts, respectively, from the execution of these presents and henceforth, shall be and are the proper debts, obligations, & liabilities of the said consolidated company, and its successors for ever, to all intents and purposes, and that all the contracts, bonds, certificates, deeds, and other acts an writings of each of the said parties of the first and second parts shall continue in full force and effect as the proper contracts, bonds, certificates, deeds, acts, and writings of the said consolidated company, without any surrender or change; and that all and singular the resolutions, proceedings, and doings of the respective boards of directors of the said respective companies, parties of the first and second parts, and of the executive committees thereof, shall be and hereby are ratified, confirmed, and declared valid, and shall be observed and kept by the said consolidated company; and that all the present stockholders of either of the said companies, parties of the first and second parts, henceforth shall be stockholders of the said consolidated company in the like amounts and with the like liabilities and rights between them severally and the said consolidated company as now exists between them severally, and the said companies, parties of the first and second parts, respectively.

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And the said parties of the first & second parts, for the consideration aforesaid, do hereby mutually grant, agree, and declare that the said consolidation shall take effect, and the said consolidated company shall commence and go into operation, immediately on the execution of these presents, and that the board of directors of the said consolidated company shall carry the said consolidation into effect and due operation by all neesessary acts and things for that purpose.

And the said parties of the first and second parts, for the consideration aforesaid, do hereby further grant, agree, and declare as follows, namely:

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First. That the number of directors of the said consolidated company shall be thirteen, and the same persons who, at the time of the execution of these presents, are directors of the Chicago and Rock Island Railroad Company shall be the directors of the said consolidated railroad company until the next election hereinafter provided for, and until their successors shall be duly chosen. The several officers of the said Chi-

cago and Rock Island Railroad Company, at the time of the execution of these presents, shall be the like officers of the said consolidated company during the pleasure of the board of directors thereof. The by-laws of the said Chicago and Rock Island Railroad Company shall be the by-laws of the said consolidated company until altered or repealed by the board of directors of the said consolidated company; and the common seal of the said parties of the second part by them hitherto held and used as the corporate seal of the said Chicago, Rock Island, and Pacific Railroad Company, shall be the common and corporate seal
127 of the said consolidated company, until the board of directors of the said consolidated company shall otherwise direct and provide.

Second. That the capital stock of the said consolidated company shall be the aggregate in amount of the capital stock which the said two companies, parties of the first and second parts, are authorized to create, issue, or have by virtue of their respective charters, and the laws of their respective States under the jurisdiction of which they were respectively organized as aforesaid, and their several & respective articles of association and incorporation, or which the said consolidated company is or shall be authorized to create, issue, or have by virtue of this present consolidation, or the laws authorizing such consolidation, or any laws which are or may be applicable to the said consolidated company, and the same may be increased to the extent and in the manner authorized by law, but the total amount of the capital stock of the said consolidated company, at the time it shall commence and go into operation, shall be deemed and taken to be equal to and limited at the aggregate of stock theretofore issued or agreed to be issued by the said parties of the first and second part respectively; and the certificates of
128 shares of stock in either of the companies, parties of the first and second parts, shall be returned and surrendered to the said consolidated company, and new certificates for the like number of shares of stock of the said consolidated company, of like amount and of like sums, paid, and of like liability for installments shall be issued to the holders therefor.

Third. That the first annual meeting of the stockholders of the said consolidated company, for the election of directors thereof, shall be held at the office of the said consolidated company, in the city of Chicago, in the State of Illinois, on the first Wednesday of June, one thousand eight hundred and sixty-eight, and the same shall be held and conducted in the manner provided by the charter and by-laws of the said company, parties of the first part, unless otherwise lawfully provided by by-laws of the said consolidated company.

Special meetings of the stockholders may be called by a majority of all the directors of the said consolidated company at such times and places as they may appoint, and the board of directors of the said consolidated company shall have power to fill vacancies in their own
129 board until the next following annual election.

In witness whereof, the said parties of the first and second parts have caused these presents to be made and executed under their respective common seals, and to be evidenced by the signature of the presiding officer of each of the said companies, parties of the first and second parts, and the corporate seal thereof, the day and year first above written.

Endorsed: Exhibit No. 3. Filed 16 May, '67.
W. G. WOODWARD, *Clerk.*

Exhibit No. 4.

THE UNITED STATES OF AMERICA, *District of Iowa:*

In the circuit court of the United States in and for the said district of Iowa, at the May term thereof, A. D. 1866.—In equity.

At a regular term of said circuit court, begun & held at Des
130 Moines, in the State of Iowa, on the second Tuesday, being the eighth day, of May, A. D. 1866:

Present, the Honorable James M. Love, judge of said district, presiding.

THOMAS C. DURANT, JACOB S. WETMORE, and Robert B. Minturn, jr., complainants, *ag't* THE MISSISSIPPI & MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants. } Original bill in equity for forecloseure of mortgage.

EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants. } Cross-bill.

131 THOMAS E. WALKER AND FRANKLIN Haven, complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants. } Cross-bill.

These causes came on to be further heard at this term, to wit, on this eleventh day of May, A. D. 1866, upon the report of Thomas F. Withrow, esq., the master to whom the same were referred; and thereupon, all of the said parties appearing by their respective solicitors, and no exceptions being taken by any of them to the said report, on motion of John N. Rogers, esq., solicitor and counsel for said complainants Durant and others, in said original bill, it is ordered that said report be, and the same is hereby, in all things confirmed.

And, thereupon, the said causes coming on for final hearing, and having been argued by counsel, upon full consideration thereof, it was ordered, adjudged, and decreed as follows, to wit:

132 That the said Mississippi & Missouri Railroad Company do pay, or cause to be paid, unto the said trustees or mortgagees set forth in the said original and cross-bills respectively, within ten days from this date, the amounts found by said master's report to be due and unpaid upon the bonds of said company secured by said mortgages respectively, to wit: To said Edward W. Dunham, the sum of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents, being the amount due & unpaid on the bonds secured by the said mortgage by said railroad company to said Dunham, as trustee,

dated July 1st, 1865, & conveying the first or eastern division of said railroad, extending from the eastern line of the State of Iowa, at Davenport, to Iowa City and Muscatine, with rolling stock and property appurtenant thereto. To said Edward W. Dunham, the further sum of four hundred and thirty-four thousand four hundred and seventy-eight dollars, being the amount due & unpaid on the bonds secured by the said second mortgage executed by said railroad company to said Dunham, as trustee, dated July 1st, 1856, and conveying the same
133 property as the first-mentioned mortgage. To said Edward W. Dunham, the further sum of seven hundred and twenty-six thousand and thirty-two dollars and eleven cents, being the amount due & unpaid on the bonds secured by the said mortgage, executed by said railway company to said Dunham, as trustee, dated July 1st, 1856, and conveying that division of said railroad known as the Oskaloosa division, extending west from the city of Muscatine, and the rolling stock and property appurtenant thereto. To the said Thomas E. Walker and Franklin Haven, the sum of four million two hundred and thirty-nine thousand nine hundred and eighty-two dollars & seventy-one cents, being the amount due on the bonds secured by the said mortgage, dated May 8th, 1857, executed to Thomas E. Walker and Curtis B. Raymond, as trustees, and conveying the division of said railroad known as the second division, extending westwardly from Iowa City, and all rolling stock and other property appurtenant thereto, together with all the interest of said company in the lands granted by the United States to the State of Iowa, and by said State to said railroad company, in
134 aid of the construction of said railroad, by the several acts of Congress, and of the general assembly of Iowa, set forth or referred to in said mortgage. And to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., the sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents, being the amount due and unpaid on the bonds secured by the said mortgage, made by said company to said Durant, Wetmore, and Minturn, as trustees, dated December 10th, 1861, and conveying the whole and every part of said railroad, rolling stock, & other property and lands.

Second. That in default of such payment of the said sums of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents, and four hundred & thirty-four thousand four hundred and seventy-eight dollars respectively to the said Edward W. Dunham, or either of them, the said property, rights, and franchises of said railroad company so conveyed by said mortgages to said Dunham on said eastern or first division of said road, to wit:
135 The said railroad, together with all and singular the railways, land procured or occupied for right of way, bridges, fences, privileges, rights, and real estate owned by said company, between the city of Davenport & the cities of Iowa City and Muscatine; and all the tools, issues, income, and profits, and all the lands used and occupied for depots or stations, with all the buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, & machinery procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road, including all property of the company on said division, real and personal; and all the rights, credits, and franchises of the said company in said division of railroad be sold at public auction by the master hereinafter appointed to execute this decree, and in the manner hereinafter directed, for the purpose of satisfying the said amounts so decreed to be paid to said Dunham, and remaining unpaid.

The following is a list or schedule of the lands and lots belonging or appertaining to said first division of said railroad, and which are to be sold together therewith, to wit:

136 Lot No. (3) three, in block No. sixty-four (64); lot No. nine (9), in block No. sixty-seven (67); lot No. two (2), in block No. one hundred & ten (110); lots Nos. four (4) and five (5), in block No. seven (7), and the west half of lot No. three (3), in block No. seven (7), all in the city of Muscatine, in the county of Muscatine, and State of Iowa.

Also all that part of the east fifty-one & ninety-two hundredths ($51\frac{92}{100}$) acres, of the west one hundred and ten and ninety-two hundredths ($110\frac{92}{100}$) acres, of the northwest quarter of section ten (10), township seventy-eight (78), range two (2) west, which lies north of the track of said railroad in Muscatine County, containing thirty-six thirty-eight-hundredths ($36\frac{38}{100}$) acres.

Also the south sixty (60) acres of the west half of the southeast quarter of section six (6), township seventy-eight (78), range two (2) west, in Muscatine County, containing sixty (60) acres.

The following is a list or schedule of the engines, cars, & rolling stock belonging or appertaining to said first division of said railroad, and to be sold together therewith, to wit:

137 Ten locomotive engines, with their tenders, being those known and designated by the following names, to wit:

The Iowa.	The Davenport.	The Nebraska.
The Muscatine.	The Oskaloosa.	The Des Moines.
The Samson.	The A. C. Flagg.	The John A. Dix.
	The Antoine Le Claire.	

Fifty (50) box freight cars, numbered from two (2) to one hundred (100), even numbers, inclusive.

Ten (10) platform cars, numbered from one (1) to nineteen (19), odd numbers, inclusive.

Six (6) passenger cars, numbered from one (1) to six (6), inclusive.

Five (5) hand-cars; three (3) truck cars; two (2) baggage cars, numbered one (1) & two (2).

Third. That in default of payment to said Edward W. Dunham of said sum of seven hundred and twenty-six thousand and fifty-two dollars and eleven cents, decreed to be paid to him as the amount due on said mortgage, executed to him on said Oskaloosa division of said railroad, all the property, rights, and franchises conveyed by said mortgage, as hereinafter set forth & specified, be sold by said master hereinafter appointed in the manner hereinafter directed, for the purpose of satisfying the said amount, to wit:

138 The said railroad of said company, constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with all bridges, fences, priviledges, & rights owned by said company between the city of Muscatine and the city of Oskaloosa, and all the tolls, incomes, issues, and profits to be had from the same; and all the lands used and occupied for depots or stations, with all buildings standing thereon, or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the said division of ninety-five miles of road (being that extending from the city of Muscatine to the city of Oskaloosa), and in any way belonging or appertaining to the said ninety-five miles of road, now constructed and to be constructed, including all the property, rights, credits, & franchises of said company in said division of railroad.

The following is a list or schedule of the lands, owned by said company, belonging or appertaining to said Oskaloosa division of said railroad, and which are to be sold together therewith, to wit:

139 The northeast quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section twenty (20), township seventy-six (76), range two (2) west, situated in Muscatine County, & containing eighty (80) acres.

All of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) of section thirty (30), township seventy-six (76), range two (2) west, which lies north of the track of said railroad, situated in Muscatine County, and containing one hundred & ten (110) acres.

Fourth. That in default of such payment of said sum of four millions two hundred and thirty-nine thousand nine hundred and eighty-two dollars & seventy-one cents, hereinbefore decreed to be paid to said Thomas E. Walker & Franklin Haven, as the amount due on said mortgage to them, on the division of said railroad extending from Iowa City westwardly to Council Bluffs, all the property, lands, rights, and franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by said master hereinafter appointed, and in the manner hereinafter directed, in order to satisfy and pay the said amount due on said mortgage, to wit:

140 All and singular the railway stations, depot lands, and other lands appurtenant to said railroad, owned by said company at the date of said mortgage, or thereafter acquired, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and all the franchises, rights, and priviledges appurtenant to said division.

Also all the right, title, interest, claim, or demand which said railroad company had at the date of said mortgage, or has since acquired, in or to all public lands of the United States granted by the act of Congress approved May 15th, 1856, and set forth in said mortgage to the State of Iowa, and by the general assembly of said State, by the act thereof recited in said mortgage, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company.

The following is a list or schedule of the locomotives and cars belonging or appurtenant to said division of said railroad, and which are to be sold together therewith, to wit:

141 Three (3) locomotives, with their tenders, to wit: Those known and designated as the "N. B. Judd," "Iowa City," and "C. W. Durant."

Three (3) passenger cars, numbers seven (7), eight (8), and nine (9).

Forty (40) box freight cars, being all that are numbered above one hundred (100).

Forty (40) platform cars, being all that are numbered above nineteen (19).

Two (2) baggage cars, numbers three (3) and four (4).

Twenty (20) dirt cars, twenty (20) hand cars, nine (9) truck cars.

The following is a list or schedule of lands and lots belonging or appertaining to said division of said railroad, and which are to be sold together therewith, to wit:

Lots one (1) and eight (8), block fifteen (15); lots one (1) and eight (8), block eighteen (18); lot three (3), block eleven (11); lot one (1), block twenty-two (22), all in Iowa City, Johnson County.

The southeast quarter (¼) of the northeast quarter (¼) of section twelve (12), township eighty (80), range twelve (12) west, in Iowa County, containing forty (40) acres.

A list or schedule of the said lands granted by the United States to the State of Iowa, and by said State to said railroad company, is
142 contained in "Exhibit A," hereto annexed, and made a part of this decree.

Fifth. That in default of such payment of such sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents to said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., decreed to be paid to them as the amount due on said mortgage by said railroad company to them, all the property, rights, & franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by the said master hereinafter appointed, in the manner hereinafter directed, in order to satisfy and pay the said amount so decreed to be paid, to wit, all and singular the roadway stations, depot lands, & other lands appurtenant to said railroad, and necessary for the uses and purposes of the road, owned by said company at the date of said mortgage, or since acquired, constituting or belonging to the railroad of said company, extending from Davenport, in the State of Iowa, to Muscatine, and to Council Bluffs, on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, build-
143 ings, machinery, tools, or implements whatever appurtenant to the said railroad, and all the rolling stock and personal property of the said Mississippi and Missouri Railroad Company, property belonging to their road and appertaining thereto, and all the franchises, rights, and priviledges appertaining to the same, existing at the date of said mortgage, or since acquired.

Also all right, title, interest, claim, or demand which said railroad company had at the date of said mortgage or have since acquired in or to all public lands of the United States, granted by act of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State by an act approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, with all the estate, right, title, & interest, property and posession, claim or demand, whatever, at law or in equity, of the said company in and to the same, and each and every part and parcel thereof.

That said property, interests, rights, and franchises, consisting of & embracing all and every portion embraced in and conveyed by all the said mortgages hereinbefore referred to, as the same are hereinbefore set forth and specified.

144 Sixth. That Thomas F. Withrow, esq., be, and he hereby is, appointed a special master commissioner for the purpose of carrying into execution this decree.

That any sale hereunder shall be at auction to the highest bidder for cash, and shall be made at the court-house in the city of Davenport, in the county of Scott, and State of Iowa, at such time as said master shall appoint.

That notice of such sale shall be given by said master by advertisement thereof for four successive weeks preceeding the day of sale, in three newspapers, published respectively in the cities of Davenport, Des Moines, and Council Bluffs, in the State of Iowa.

And in case the said lands granted by the United States, as hereinbefore set forth and specified in "Exhibit A," hereto annexed, shall be intended to be sold at such sale, such advertisement thereof shall con-

The following is a list or schedule of the lands, owned by said company, belonging or appertaining to said Oskaloosa division of said railroad, and which are to be sold together therewith, to wit:

139 The northeast quarter (¼) and the southwest quarter (¼) of the southwest quarter (¼) of section twenty (20), township seventy-six (76), range two (2) west, situated in Muscatine County, & containing eighty (80) acres.

All of the southwest quarter (¼) and the west half (½) of the southeast quarter (¼) of section thirty (30), township seventy-six (76), range two (2) west, which lies north of the track of said railroad, situated in Muscatine County, and containing one hundred & ten (110) acres.

Fourth. That in default of such payment of said sum of four millions two hundred and thirty-nine thousand nine hundred and eighty-two dollars & seventy-one cents, hereinbefore decreed to be paid to said Thomas E. Walker & Franklin Haven, as the amount due on said mortgage to them, on the division of said railroad extending from Iowa City westwardly to Council Bluffs, all the property, lands, rights, and franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by said master hereinafter appointed, and in the manner hereinafter directed, in order to satisfy and pay the said amount due on said mortgage, to wit:

140 All and singular the railway stations, depot lands, and other lands appurtenant to said railroad, owned by said company at the date of said mortgage, or thereafter acquired, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and all the franchises, rights, and priviledges appurtenant to said division.

Also all the right, title, interest, claim, or demand which said railroad company had at the date of said mortgage, or has since acquired, in or to all public lands of the United States granted by the act of Congress approved May 15th, 1856, and set forth in said mortgage to the State of Iowa, and by the general assembly of said State, by the act thereof recited in said mortgage, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company.

The following is a list or schedule of the locomotives and cars belonging or appurtenant to said division of said railroad, and which are to be sold together therewith, to wit:

141 Three (3) locomotives, with their tenders, to wit: Those known and designated as the "N. B. Judd," "Iowa City," and "C. W. Durant."

Three (3) passenger cars, numbers seven (7), eight (8), and nine (9).

Forty (40) box freight cars, being all that are numbered above one hundred (100).

Forty (40) platform cars, being all that are numbered above nineteen (19).

Two (2) baggage cars, numbers three (3) and four (4).

Twenty (20) dirt cars, twenty (20) hand cars, nine (9) truck cars.

The following is a list or schedule of lands and lots belonging or appertaining to said division of said railroad, and which are to be sold together therewith, to wit:

Lots one (1) and eight (8), block fifteen (15); lots one (1) and eight (8), block eighteen (18); lot three (3), block eleven (11); lot one (1), block twenty-two (22), all in Iowa City, Johnson County.

The southeast quarter (¼) of the northeast quarter (¼) of section twelve (12), township eighty (80), range twelve (12) west, in Iowa County, containing forty (40) acres.

A list or schedule of the said lands granted by the United States to the State of Iowa, and by said State to said railroad company, is
142 contained in "Exhibit A," hereto annexed, and made a part of this decree.

Fifth. That in default of such payment of such sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents to said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., decreed to be paid to them as the amount due on said mortgage by said railroad company to them, all the property, rights, & franchises conveyed by said mortgage, as the same are hereinafter set forth and specified, be sold by the said master hereinafter appointed, in the manner hereinafter directed, in order to satisfy and pay the said amount so decreed to be paid, to wit, all and singular the roadway stations, depot lands, & other lands appurtenant to said railroad, and neesessary for the uses and purposes of the road, owned by said company at the date of said mortgage, or since acquired, constituting or belonging to the railroad of said company, extending from Davenport, in the State of Iowa, to Muscatine, and to Council Bluffs, on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, build-
143 ings, machinery, tools, or implements whatever appurtenant to the said railroad, and all the rolling stock and personal property of the said Mississippi and Missouri Railroad Company, property belonging to their road and appertaining thereto, and all the franchises, rights, and priviledges appertaining to the same, existing at the date of said mortgage, or since acquired.

Also all right, title, interest, claim, or demand which said railroad company had at the date of said mortgage or have since acquired in or to all public lands of the United States, granted by act of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State by an act approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, with all the estate, right, title, & interest, property and posession, claim or demand, whatever, at law or in equity, of the said company in and to the same, and each and every part and parcel thereof.

That said property, interests, rights, and franchises, consisting of & embracing all and every portion embraced in and conveyed by all the said mortgages hereinbefore referred to, as the same are hereinbefore set forth and specified.

144 Sixth. That Thomas F. Withrow, esq., be, and he hereby is, appointed a special master commissioner for the purpose of carrying into execution this decree.

That any sale hereunder shall be at auction to the highest bidder for cash, and shall be made at the court-house in the city of Davenport, in the county of Scott, and State of Iowa, at such time as said master shall appoint.

That notice of such sale shall be given by said master by advertisement thereof for four successive weeks preceeding the day of sale, in three newspapers, published respectively in the cities of Davenport, Des Moines, and Council Bluffs, in the State of Iowa.

And in case the said lands granted by the United States, as hereinbefore set forth and specified in "Exhibit A," hereto annexed, shall be intended to be sold at such sale, such advertisement thereof shall con-

tain, or be accompanied by, in at least one of said newspapers in which the same shall be published, a full and complete schedule or list of said lands so intended to be sold.

Seventh. That, at any sale made under this decree, each of the
145 said several divisions or portions of said railway, to wit, the first or eastern division, extending from the east boundary line of the State of Iowa, at Davenport, to Iowa City and Muscatine, the Oskaloosa division extending from Muscatine to Oskaloosa, or so far as the same may have been constructed, and the second or western division extending westwardly from Iowa City to Council Bluffs, or so far as the same may have been constructed, together with all the property, real or personal, rights, priviledges, or franchises of said company, engines, cars, and rolling stock of every kind belonging or appertaining to such division, or connected, or used therewith, as fully as the same are hereinbefore specified & set forth, or covered or conveyed by the said mortgages, or either of them, shall be sold seperately and apart from any other property to be sold at such sale.

Eighth. That subject to the provisions and directions hereinafter made and given, as to payment of costs of suit and sale, and of the costs and expenses of the trustees, the said master shall make distribution of the proceeds of such sale as follows, to wit:

He shall, out of the proceeds of the sale of the said first divi-
146 sion of said railroad, and property and franchises appurtenant thereto and sold therewith, first pay to the said Edward W. Dunham, as trustee for the holders of the bonds secured by said first mortgage on said division, the said sum of one million three hundred and thirty-six thousand six hundred and forty-three dollars and fifty cents due on said mortgage, with interest thereon at six per cent. per annum from this date to the date of such sale, or so much thereof as said proceeds shall be sufficient to pay, and as shall at the time of such sale remain unpaid by such railroad company to said Dunham.

And out of any surplus of said proceeds then remaining, he shall pay to said Edward W. Dunham, as trustee for the holders of bonds secured by the said second mortgage on said division, the said sum of four hundred and thirty-four thousand four hundred and seventy-eight dollars due on said second mortgage, with interest thereon at the rate aforesaid, from this date to the date of such sale, or so much thereof as said railroad company shall have failed to pay, and as such surplus shall be sufficient to pay.

147 And out of the proceeds of the sale of the said Oskaloosa division of said railroad, and the property and franchises appurtenant thereto and sold therewith, he shall first pay to the said Edward W. Dunham, as trustee for the holders of bonds secured by the said mortgage to him, on the said division of said railroad, the said sum of seven hundred and thirty-six thousand and thirty-two dollars and eleven cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of such sale, or so much thereof as said railroad company shall have failed to pay, and as said proceeds of sale shall be sufficient to pay.

And out of the proceeds of the sale of the said second or western division of said road, extending west from Iowa City, and of the property and franchises belonging and appertaining thereto, and sold therewith, as well as out of the proceeds of the sale of said lands specified in Schedule A, hereto annexed, or of the interest of said company therein, or of any part thereof, the said master shall first pay to the said Thomas E. Walker and Franklin Haven, as trustees for the holders of bonds secured

by said mortgage to said Walker & Raymond on said division of
148 said road & said lands the said sum of four millions two hundred & thirty-nine thousand nine hundred & eighty-two dollars and seventy-one cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of said sale, or so much thereof as the said railroad company shall have failed to pay, and as said proceeds of sale shall be sufficient to pay.

And out of any surplus which shall remain from the proceeds of either and all of said divisions of said railroad, & said lands, and other property, after payment thereout of the several sums hereinbefore directed to be paid thereout respectively, the said master shall pay to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., as trustees for the holders of bonds secured by said mortgage to them on the whole of said railroad lands and other property, the said sum of seven hundred and forty-five thousand four hundred and nine dollars and two cents due on said mortgage, with interest thereon at the rate aforesaid, from this date to the date of said sale, or so much thereof as shall then remain unpaid by said company, and as said surplus shall be sufficient to pay.

149 And if any surplus shall remain of said proceeds of sale, after payment thereout of all the sums hereinbefore directed to be paid, the same shall be by said master paid into this court, to be disposed of as the court shall hereafter order and direct.

Ninth. That the said several trustees shall, on receipt by them respectively of the money hereinbefore directed to be paid to them out of the proceeds of such sale, apply the same in payment to the holders thereof of the bonds & cupons, secured by said several mortgages, to the payment of which said sums are respectively applicable, paying the same in full, if the said proceeds of sale shall prove sufficient to do so; and if not, applying the moneys properly applicable to the payment of each class of bonds, upon said bonds, pro rata.

And for the purpose of enabling said trustees to close their respective trusts, it is hereby ordered and decreed that all persons holding bonds or cupons secured by the said mortgages, or either of them, shall present the same for payment to said trustees respectively within two years from the date of the sale under this decree, and, in default of such presentation for payment within said two years, the holders of such bonds
150 & cupons, not so presented, shall be debarred from all rights to have any portion of the proceeds of the sale of said mortgaged property applied in payment of said bonds & cupons, and any surplus of said proceeds then remaining in the hands of said trustees, or either of them, shall be applied by them to pay and satisfy any of such bonds to which the same may be properly applicable, and which shall have been presented to said trustee or trustees within the time above limited, and shall not previously have been paid in full; applying such surplus upon such bonds and cupons pro rata, and in proportion to the amounts due and unpaid on them respectively, in case the amount shall not be sufficient to pay them in full.

And if, after payment of all such bonds and cupons in full, there shall still remain a surplus of the funds in the hands of such trustee or trustees, then the same shall be reported to this court, and shall be disposed of as the court may direct.

And the said several trustees are hereby ordered and directed, on receipt by them of their respective shares of the proceeds of sale, to give notice to the holders of bonds and cupons entitled to share in the distribution thereof, to present their bonds and cupons for pay-

151 ment of amounts to be paid thereon by said trustees, at some place to be designated in said notice; and that if not presented within the time aforesaid, they will be barred as aforesaid, by publication in some newspaper, published in the city of New York, daily, for ten days.

Tenth. That the costs of these suits, including those of all the parties thereto, to be taxed, together with the costs and expenses of executing this decree, shall be apportioned and charged by the said master upon the proceeds of the sale of the said several divisions of said railroad and property appurtenant thereto (said lands granted by the United States being for this purpose considered and treated as part of the property appurtenant to the second or western division of said railroad), which shall be sold, under this decree, pro rata, in proportion to the amount realized by the sale of each division respectively; and the proportion of such costs, so charged on the proceeds of each division, shall first be paid by said master thereout, before making any of the other payments hereinbefore directed to be made out of such proceeds.

And the costs and expenses of the said trustees in the said
152 several mortgages respectively, in executing their respective trusts, including reasonable counsel fees and compensation to said trustees, all of which shall be fixed & allowed by the court or a judge therof, shall be paid by them respectively, after payment of said taxable costs, out of the proceeds of sale of the division or divisions of said railroad & other property, covered & conveyed by the mortgage or mortgages, to such trustee or trustees respectively, as hereinbefore directed; but not until after payment in full of the amount or amounts due on any prior mortgage or mortgages, to be paid out of said proceeds as hereinbefore directed, together with the costs and expenses of the trustee or trustees in such prior mortgage or mortgages.

Eleventh. That the said railroad company and its officers shall account for and pay over to the said master, and that he be and is hereby authorized and directed to receive from them, the nett earnings and income of said railroad, from this date up to the day of such sale (in case a sale shall be made under this decree), and until any purchaser at said sale shall take posession; and any amount, so accounted for and paid over to said master, shall be added to the proceeds of sale, and
153 applied in the same manner as hereinbefore directed.

Twelfth. That upon the completion of any sale made under and in pursuance of this decree, the said master shall make, execute, and deliver to the purchaser or purchasers thereat, a good and sufficient deed or deeds, conveying to him or them the property, rights, priviledges, and franchises, so sold to and purchased by him or them, which said deed or deeds shall be valid & effectual to convey to, and vest in, said purchaser or purchasers, all the right, title, and interest, claim and demand, whatever, in law or equity, which the said Mississippi & Missouri Railroad Company had at the time of the execution and delivery of the said mortgages, or either of them, or have since acquired, or which was transferred and conveyed by the said mortgages or either of them, of, in, or to the said property, rights, priviledges, or franchises so sold and conveyed by said master.

And from and after such sale, the said Mississippi and Missouri Railroad Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, and all and every person or
154 persons claiming by, through, or under them, or either of them subsequently to the filing of the original bill of complaint herein,

be and they are hereby forever barred & foreclosed of and from all and every interest, estate, right, claim, or equity of redemption, of, in, or to the said property, rights, priviledges, or franchises so sold, and every part and parcel thereof.

That upon the confirmation of such sale and conveyance by said master, by the order of this court or a judge thereof, the said railroad company shall surrender posession of said railroad, together with all the depots, stations, grounds, rolling stock, materials, and other property of every kind and description appurtenant or belonging thereto (so far as the same shall have been so sold under this decree), to the purchaser or purchasers thereof, and that, in default of such surrender, the master hereby appointed may take posession of said property, and deliver the same to such purchaser or purchasers, and that proper process may issue from this court for that purpose.

Thirteenth. And it is further ordered that said master make report to this court of his actings and doings in the premises at the next
155 rule day after such sale.

Fourteenth. And it is further ordered, adjudged, and decreed that for any portion of the said sums found due on the bonds secured by said mortgages respectively, which shall remain due and unpaid after sale of the said mortgaged property, under and by virtue of this decree, in consequence of the insufficiency of said proceeds of sale to pay the same, the said trustee or trustees to whom said amounts respectively hereinbefore directed to be paid, shall have judgment against the Mississippi and Missouri Railroad Company, and shall respectively be entitled to have a writ or writs of general execution against all the property of said company, to collect the same as provided by the rules and practice of this court.

Endorsed: Exhibit No. 4. Filed 16 May, '67.
W. G. WOODWARD, *Clerk.*

156 On this day, to wit, the sixteenth day of October, 1867, came the plaintiffs, by their solicitors, Grant and Smith, and filed in said clerk's office the deposition of Ebenezer Cook in said cause; which deposition is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS }
vs.
THE CITY OF DAVENPORT & OTHERS. }

Deposition of Ebenezer Cook, of Davenport, Scott County, Iowa, a witness produced, sworn, and examined on behalf of the plaintiff, to be read in evidence on the trial of the above-entitled cause, taken at Davenport, on the 28th day of February, 1867, notice of the time of taking the deposition being waived by the defendants.

James Grant appeared for the plaintiffs, and Cook and Drury for the defendants.

Interogatory 1st. What is your age, place of residence, and occupation?

Answer. Fifty-seven years; reside at Davenport, Iowa; em-
157 ployee of Chicago, Rock Island, and Pacific railroad.

Int. 2d. Have you any official connection with the Mississippi

and Missouri Railroad Company, and the Chicago and Rock Island corporation, or either of them; and, if so, how long have you held such connections, and what are they & have they been?

Answer. I am secretary of the Mississippi & Missouri Railroad Company, & a director therein; and have been for nearly four years; I have been a director in the Chicago and Rock Island Railroad Company from its organization until its consolidation with the Chicago, Rock Island, and Pacific Railroad Company, in 1866.

Inter. 3. Please look at the following paper (the witness is here shown Exhibit A of the bill entitled proceedings of a meeting of the bond and stockholders of the Mississippi & Missouri Railroad Co., held Oct. 18, 1865, &c.), and state if you know that a meeting as is therein set forth was held and the proceedings thereof made known to the Mississippi & Missouri Railroad Company, and the Chicago and Rock Island Railroad Companies, prior to 1st Nov., 1865.

158 Answer. I was present at the meetings of the bond and stockholders of the Mississippi & Missouri Railroad Company, in New York, on the 18th & 20th days of Oct., 1865, and said exhibit correctly sets out the proceedings; there was also present one or two other directors of the Chicago and Rock Island Railroad Company, and four or five directors of the M. & M. R. R. Co. I do not know that the proceedings were ever formally brought before either board in session; but I think nearly all the directors of both companies were aware what in substance had been done at those meetings prior to Nov. 1, 1865.

Int. 4. Please look at the following papers (the witness is here shown Exhibits B & C, referred to in the bill, "one memorandum of undertakings, &c., and one memorandum of an agreement, &c.," being the contracts for sale and occupancy of Miss. and Miss. R. R. of Nov. 1, 1865), and state whether or not said contracts of Nov. 1, 1865, were made by the parties in consequence of and to carry out the resolutions of said meetings of 18th & 20th Oct., 1865, referred to in question 3, and what power had the executive committee of said railroad companies.

Answer. As early as September, 1865, negociations were commenced by some individual directors of the Chicago and Rock Island with some individual directors of the M. & M. R. R. Co., for the sale and
159 transfer of the M. & M. to Chicago and Rock Island. These negociations were commenced and continued without any authority from either board of directors, I think, until about the 10th October, when a direct proposition was made (which was approved by the ex. committee of the Chicago and Rock Island Railroad Company) that the Chicago and Rock Island would give $5,500,000 for the property of the Mississippi and Missouri, making the payment in satisfactory bonds. Thereupon the meeting of the 18th & 20th October, called by a public notice and held as before stated. That meeting appointed Mess. Stanton, Elliott, and Wilson a committee, by the passage of the resolution offered by Judge Emott, and the negociations as to the mode and terms of payment and details of sale was thereafter conducted exclusively with that committee. The agreements referred to were prepared by the committee, submitted to the executive committee of the M. & M. R. R. Co., who authorized their execution on the part of that company, and the executive committee of the C. & R. I. R. R. Co. authorized the execution thereof on the part of the C. & R. I. co., both of said executive committees having, by the by-laws, the full power of their respective boards when the boards were not in session, and they were not then in session.

Int. 5th. State whether or not the Chicago and Rock Island Rail-

160 road Company caused the company referred to in article 2 of said "memorandum of understanding," &c., of 1st Nov., 1865, to be incorporated under the general laws of the State of Iowa. If so, when, & what was the name of the company?

Answer. I do not think there was any action of the board of directors or executive committee of the Chicago and Rock Island co., in relation to the organization of the company in Iowa; but on the 28th day of May, 1866, a company was organized in New York under the laws of the State of Iowa, the corporators and directors being all directors of the Chicago and Rock Island Railroad Company, and I think nearly all, if not all, the directors of the C. & R. I. co. knew of the organization, which was called the "Chicago, Rock Island, and Pacific Railroad Company," and that the object of the corporation was to purchase the property of the Mississippi & Missouri Railroad Company.

Int. 6th. State whether or not the Mississippi and Missouri Railroad Company, in pursuance of article 1 of said "memorandum of understanding," took the proper steps to cause the mortgages upon its line to be foreclosed and its entire property, real and personal, to be sold so that the purchaser should be able to transfer a perfect and unincumbered title to such incorporated company in Iowa as the Chicago and Rock
161 Island Railroad Company might designate to become the purchaser and owner thereof; state whether the Miss. & Mo. caused a new suit to be commenced or adopted one already commenced, and, if so, what suit, & state whether a foreclosure and sale was had, and when and where.

Answer. I do not know that the Mississippi and Missouri Railroad Company ever took any steps whatever for the foreclosure of the mortgages. I do not think that company ever did anything in relation to the matter of purchase and sale. After authorizing the agreements before referred to be executed, Mess. Stanton, Elliott, and Wilson, the committee aforesaid, took steps to get the bonds of the company deposited with the Union Trust Company for their use, and as soon as they had the control of a sufficient number of the bonds of each class they applied to the trustees of the land grant bonds, Mess. Walker and Haven, and to E. W. Dunham, trustee in the 1st & 2nd mortgages, eastern division, and the Oskaloosa division, to cause the mortgage to be foreclosed, and thereupon those trustees in the mortgages directed Cook and Drury to institute suit for foreclosure. They did so, I think, in the Scott County district court. In the meantime, Messrs. Durant, Minturn, and Wetmore, trustees in a junior mortgage, had commenced a suit for foreclosure
162 of that mortgage in the circuit court of the United States at Des Moines, but had not made the trustees in the older mortgage parties. In April, 1866, the Chicago & Rock Island R. R. Co. bought the major part of the bonds secured by that mortgage and got the control of that suit, and thereupon Messrs. Walker and Haven, and E. W. Dunham were made parties thereto. They severally filed cross-bills to foreclose the mortgages in which they were trustees, and at the May term, 1866, all the mortgages were foreclosed and sale of the property ordered, and on the 9th day of July, 1866, the property was sold at Davenport, Iowa, by a special master appointed for that purpose.

Int. 7th. State what person or company became the purchaser at said foreclosure sale, and for what prices, and whether or not the corporation to be created by the Chicago and Rock Island, in pursuance of article 2 of said contract, became the purchaser, and thereby disposed with the transfer and sale provided in article 2 of said memorandum of 1st Nov., 1865.

Answer. The property was purchased at the sale above mentioned by the Chicago, Rock Island, and Pacific Railroad Company, being the same company I have stated was organized May 28th, 1866. The property was sold in three divisions, and—

	The eastern division sold for	$1,000,000
163	The Oskaloosa division for	300,000
	The land grant division & lands for	800,000
		$2,100,000

Int. 8th. State whether or not on the day of said sale, under said foreclosure, any money was paid, and if not paid then, when & by what corporation it was ultimately paid or furnished, & whether or not afterwards the money paid was converted into the bonds "part of the bonds for $5,550,000 provided to be paid by the Chicago & Rock Island Railroad Company," for the purchase of the property of the Mississippi & Missouri Railroad Company referred to in article 4 of said memorandum of understanding of 1st Nov., 1865; state the whole process, & also state whether or not the Chicago & Rock Island Railroad Company in the end paid any more or other money than the $5,500,000 in bonds provided to be paid by said contract.

Answer. No money was paid on the day of sale, but an arrangement was made to pay the amount of the several bids (less the costs) to the trustees in the mortgages in New York, and it was so done. The Chicago & Rock Island Railroad Company loaned the Chicago, Rock Island, and Pacific Railroad Company the money to settle with the trustees for
164 the amount of the purchase-money at the sale under foreclosure. The committee through the trust company were in posession of the great bulk of the bonds secured by the several mortgages, & an arrangement was made that they would deliver to the Chicago, Rock Island and Pacific co. those bonds, and the Chicago & Rock Island co. agreed to pay therefor the Union Trust Company certificates in the manner therein specified, and to furnish the requisite amount of money to enable the trustees in the mortgages to pay off such bonds as had not been deposited with the trust company for the committee. Those bonds were taken to the proper trustees by the C., R. I., & P. co., and that co. received the pro rata share of money arising from the sale, under the decree, to which their bonds were entitled, and paid their loan from the C. & R. I. co., less the amount of money left in the hands of trustees as above stated. Before any payment was made of the trust company certificates a consolidation of the properties of the two companies spoken of in this answer was made under the name of the Chicago, Rock Island, and Pacific Railroad Company, which company was required by the articles to perform all the contracts and agreements of each of the other companies. The consolidated company provided for issuing $9,000,000 bonds, with the right to increase to $13,500,000 in certain events,
165 dated September 1, 1866, payable 30 years after date. Of these, $5,500,000 was appropriated to paying off the trust company certificates & raising money to replace that which had been left in the hands of the trustees as stated, the costs, expenses, &c. I do not know the amount of the bonds which have been paid out, but as near as I can recollect all the trust co. certificates issued for bonds, except about $36,000, had been taken up two weeks since. I cannot tell whether in the end the successor of the Chicago and Rock Island co. will have paid more or less than $5,500,000, as the latter co. purchased some of the bonds of the M. & M. R. R. Co. at a higher rate than provided in the schedule, and some at a

less rate. (The Ch. & R. I. co. have not yet been called upon to pay over the $5,500,000.)

Int. 9th. By refrence to the proceedings of the meeting of the stock and bondholders of the Miss. & Mo. co., of 20th Oct., 1865, Messrs. Wilson, Stanton, and Elliott were appointed a committee to arrange the terms and mode of payment with the Chicago and Rock Island Railroad Company and the details of the sale, and they were instructed to make an arrangement with some trust co. to receive the bonds & stocks of the parties assenting, and issue certificates, &c. Now please state if Messrs.
166 Stanton, Elliott, and Wilson performed the duty imposed on them, and he shown a circular purporting to be issued by them, marked Exhibit D, and a form of contract with them and stock and bondholders assenting, marked Exhibit E. State whether or not they issued said circular, and if the stock and bondholders assenting signed said contract.

Answer. I have already stated that Messrs. Stanton, Elliott, and Wilson did perform the duties inquired about. Such a circular was issued by them, and such an agreement was posted into books, and all bondholders & stockholders who surrendered their bonds & stocks signed said agreement by themselves or agents.

Int. 10th. The sale under the forecloseure was on the 9th of July, 1866. Can you state how many of bondholders had signed said contract & deposited their bonds with the trust company at that date, and how many of the stockholders at that date, and how many of each class (bond and stockholders) have up to this date consented to the terms of said sale, and accepted the new bonds according to the terms of said meeting of 20th Oct.?

Answer. I cannot state (having left the paper neesessary in New York a few days since) what amount of bonds and stocks had been deposited
167 with the trust company up to 9th July, 1866, but see from my memorandum that it would require of bonds to pay the trust company certificates the sum of $5,240,679 04. No bonds or stock has been received by the trust company since that date. Holders of bonds who have not assented have applied to the trustees of the respective mortgages & received for their bonds their pro rata share of the proceeds of sale under forecloseure. Nearly all of all classes of bondholders & stockholders surrendered and signed the agreement.

Int. 11. State whether or not the Chicago & Rock Island Railroad Company had procured the neesessary power under article 3 of said memorandum of 1 Nov., 1865, to consolidate with the new company to be incorporated in Iowa, and whether said consolidation has actually taken place, when, and under what name, and whether the bonds to be issued under article 4 were issued by the consolidated company, and what date to they bear.

Answer. I believe I have fully answered this interogatory in answer to question No. 8.

Int. 12th. State how many of said bonds, if you have not already so stated, issued by the Miss. & Mo. railroad, referred to in said meeting of
168 18th & 20 Oct., and said contract of 1 Nov., 1865, have been surrendered, and new bonds under article 4 of said contract delivered to the committee in lieu thereof, at the rates proposed up to this date, and how many of the old bonds of the Miss. and Mo. co., included in their various deeds of trust, are now outstanding.

Answer. I believe nearly all the bonds of the M. and M. company have been surrendered to the trustees in the several mortgages. There were some few outstanding at my latest advices, but the trustees had the

money in hand to pay their pro rata on presentation. None of the new bonds (except for their compensation) were delivered to the committee, but were paid out to the holders of the trust company certificates as presented to the C., R. I., & P. R. R. Co., and the amount so paid out has been stated, as near as I know.

Int. 13th. State whether or not the Mississippi and Missouri Railroad Company at the date of 18th October, , and up to this date was and is insolvent, and whether or not, on the completion of said sale, it did not dispose of all its property, abandon the road it undertook to build, and cease to exist, except for the purpose of closing its business.

Answer. I do not know of any property owned by the Mississippi and Missouri Railroad Company after the sale of 9th July, 1866, and
169 I understand the company does not expect to build any more railroads; judgments are unpaid against the company, and under the state of facts I should infer that it was insolvent.

Int. 14. State whether or not Messrs. Stanton, Elliott, & Wilson has proceed to perform the trusts imposed on them by the proceedings of the meetings of 18 & 20 Oct., 1865, and the subsequent contracts.

Answer. I have fully answered this interogatory.

Int. 15th. Of what States are the trustees of the bonds and mortgages issued by the Miss. & Mo. Railroad Company, and referred to in the meetings of 18 & 20 Oct., 1865, citizens? And state whether they are within the jurisdiction of the State of Iowa, and have been since 1 July, 1866.

Answer. The trustees all reside in either the States of New York and Massachusetts. I know of no one of them having been in Iowa since July, 1866, except Mr. T. C. Durant, who passed through the State on a railroad train in October or November, 1866.

Int. 16. What amount of bonds were issued & delivered by the city of Davenport, Iowa, to the Mississippi and Missouri Railroad Company, in payment of subscriptions of stock, and guarantied by the latter company; what amount of Scott County; what amount of the city of
170 Muscatine; what amount of Muscatine County; what amount by the county of Johnson; and what amount by Iowa City?

Answer. The city of Davenport subscribed $75,000 to the capital stock of the M. & M. railroad, and the county of Scott $50,000, and each issued bonds to the respective amounts, but those bonds were not taken by the company. The city and county sold the bonds and paid their subscription to the company in installments in the same manner substantially as individual stockholders paid. The city of Muscatine subscribed $130,000; the county of Muscatine subscribed $150,000; the county of Johnson, $50,000; and the city of Iowa City, $50,000; and each issued bonds to the amount of their several subscriptions; and I think those bonds were delivered to the railroad company in payment of their respective subscriptions, but am not certain. All of the city and county bonds herein spoken of, I think were guaranteed by the said railroad company, except Muscatine County; and the amount of them guaranteed I cannot say.

Int. 17th. Look at the following bonds. (The witness is here shown bond No. 36, of the city of Davenport; bond No. 13, of Scott County;
171 bond No. 75, of the city of Muscatine; and bond No. 83, of Iowa City, and the guaranty upon each; bond No. , of Johnson County, & bond No. , of Muscatine County.) Now state whether or not these bonds, cupons, & guaranty on each are severally part or parcels of the bonds referred to in your last answer, and state whether the bonds of

each county and city, and guaranty on them are all alike, except in Nos. and amounts; and as to amount wherein do they differ?

Answer. These bonds are a part and parcel of the bonds referred to in former answer, and I think all of each separate city and county were alike, except that some were for $1,000, and some for $500, and were differently numbered.

Int. 18th. State whether or not the bonds of those cities and counties to the amounts above named were delivered to the Mississippi and Missouri Railroad Company in payment of stock subscriptions, and for what price and company sold and delivered said bonds, and what was done with the money received therefor.

Answer. I have stated that the bonds of Muscatine City, Iowa City, & Johnson County, were, as I thought, delivered to the company.
172 I only know what the company done with one parcel; that of Johnson County was sold to the contractors for building the road, for $42,500, they being either six or 7 per cent. bonds, while the others were 10 per cent. bonds; I cannot state further. All the moneys received by the company from stock subscriptions was expended in the construction of the road.

Int. 19. State what induced the said Mississippi and Missouri Railroad Company to guarantee the said bonds, and whether the said guaranty was executed after the bonds had been delivered to said company on payment of stock subscriptions.

Answer. I can hardly state the inducement. I suppose that it was believed that the bonds would sell better with the guaranty than without, and the cities and counties agreed that the stock should be issued to, and held by, the treasurer of the company, in trust for the security of the payment of the bonds. I cannot say whether the bonds of Muscatine City, Iowa City, and Johnson County had been taken by the company prior to guarantee. In the case of city of Davenport, and Scott County, they were guaranteed at the request of the said corporations before they were sold by them, respectively.

173 Cross-interogatories on the part of the defendants:

Int. 1st. The M. & M. railroad mortgages were foreclosed, and the road and franchise sold for non-payment of interest; why was not the interest paid on the bonded debt of the company?

Answer. Because the road did not earn enough to pay the interest, after deducting neesessary repairs and operating expenses.

Int. 2. When did the board of directors of the M. & M. Railroad Company last declare a dividend, and why have they not semi ——— declared a dividend?

Answer. The last dividend was declared in the spring of 1857. There has been no money applicable to dividends semi that time.

Int. 3d. This sixteen per cent. claimed by plaintiff in this suit, is that a dividend declared by the board of directors or executive committee of said M. & M. Railroad Company?

Answer. It is not.

Int. 4th. If it is not a dividend to the stockholders, declared by the proper officers of the road, explain what it is, and from what fund it is payable.

Answer. The M. & M. Railroad Company were bankrupt. They could not pay the interest on its bonded debt. The bondholders who were represented at the meeting of 18th & 20 October, , referred to,
174 knew of the offer of five and a half millions of dollars for the M. & M. road and franchises, and also knew that this offer was con-

tingent on obtaining a speedy title to the road, as, unless the Rock Island could get the M. & M. road immediately so as to prosecute the road west, they would not purchase or give that sum for it. They expressed the opinion that it would not sell for that sum at a forced public sale, & consequently they were anxious to close the trade, so far as they could do so. It was said that if the stockholders interposed defences and delays to the foreclosure of their mortgages, the title could not be obtained in time to satisfy the Rock Island company. It was thereupon agreed at said meetings that the bondholders should deduct from the amounts due them on their bonds a certain pro rata, as shown by said proceedings, which would leave of the $5,500,000 a sum estimated to be sufficient to give each stockholder sixteen per cent. upon his stock. It was stated by bondholders in said meetings that this was proposed to be done to quiet the stockholders and prevent delay in foreclosing the mortgages and obtaining the title for the Rock Island company.

Int. 5th. What was the inducing cause of the bondholders to give this much of the money to the stockholders?

175 Answer. I have already answered the question in my answer to the last. I can only further say in answer to this question, that it was said in the meeting that the bondholders would probably realize a greater sum by this arrangement than they would if the mortgages were foreclosed and the property sold at a forced sale, and I suppose that was the inducement.

Int. 6th. You have stated that you are secretary and one of the directors of the Mississippi Railroad Company; will you state the number of shares of stock there was in the capital stock of said company?

Answer. There was about thirty-four thousand shares of stock, each share representing one hundred dollars.

Int. 7th. Have you a copy of the original articles of incorporation and association of the Mississippi and Missouri Railroad Company? If so, annex a copy of the same to your deposition and mark it Exhibit No. 1.

Answer. I have a copy, and hereto annex the same, marked Exhibit No. 1.

Int. 8th. Did a majority of the stockholders, or did a majority of two-thirds in interest of the stockholders of the M. & M. Railroad

176 Company, on or before the 1st day of Nov., 1865, request the board of directors or the executive committee to sell, transfer, & dispose of the estate, rights, and franchises of said company or any part thereof, or was any assent of said stockholders ever filed with said board or executive committee?

Answer. They did not. There is no record of such assent, and I have no knowledge of any such request or assent being given.

Int. 9th. You have stated that the bond & stockholders to a certain extent—that is, all the assenting bond and stockholders, deposited their bonds and stocks with the Union Trust Company of New York City, & received from said company a certificate of the fact; please state whether such certificates issued to stockholders were negotiable & passed by sale and delivery from one to another, and if you have one of those certificates annex it to your deposition.

Answer. I have seen a great many of the certificates issued by the trust company. They were negotiable & were bought and sold in the market. I hereto annex a blank form of the certificates and mark it Exhibit No. 2.

Int. 10. Do you know whether any of said trust-company certificates were sold & passed out of the hands of the original stockholders,

177 and do you know of such sales and transfers being made before the 9th of July, 1866?

Answer. I do know that many of said trust certificates were sold, and passed out of the original stockholders, and I know that several such sales were made before the 9th of July, 1866.

Int. 11th. Do you know whether any of said trust certificates are now held by the original stockholders?

Answer. I do not know; it is impossible for me to tell who now owns them; I only know that they were selling freely in the market, but who owns them, or any of them, I cannot tell.

Further direct interogatories on the part of the plaintiff:

Int. 1st. Was there any other or different agreement at said meetings of 18th & 20 Oct., 1865, referred to in your answer to the 4th cross-interogatory, but that what is specified in the printing account thereof, already put in evidence by the plaintiff?

Answer. There was not. The conversations and speeches at the meetings were not reduced to writing. The resolutions & proposals of sale and terms of division were reduced to writing & are correctly set out in said printed paper.

178 Int. 2d. Furnish a copy of the certificate given to the bondholders.

Answer. I here annex it, marked Exhibit G.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss:*

Subscribed & sworn to by Ebenezer Cook, in my presence & before me, this 9th day of May, 1867.

[SEAL.] LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

[U. S. rev. stamp, 5 cents, affixed and cancelled.]

Endorsed: Filed 16 May, '67.

W. G. WOODWARD, *Clerk.*

The further deposition of Ebenezer Cook is on the files of said cause in said clerk's office, but there is no record by endorsement thereon or otherwise in said office, showing when or by whom the same was filed; said deposition is in the words and figures following, to wit:

C. C. for Iowa.

HOWARD & ALS.
vs.
CITY OF DAVENPORT & OTHERS.

179 Further questions and answers of Ebenezer Cook taken and admitted by consent of Grant, for plaintiff, and Cook, for defendants, who appear.

Question No. by plaintiff. In your direct answer you say you do not know that the bonds of Muscatine County were guaranteed. We here show to you bonds Nos. of the county of Muscatine, of which the following is a copy, with guarantee endorsed and signed by John A. Dix, president of Mississippi & Missouri Railroad Company, and A. C. Flagg, treasurer.

"STATE OF IOWA:

"*Bond of the county of Muscatine.*

"C, (No. 36.) ($1,000.)

"Be it known that the county of Muscatine, in the State of Iowa, owes to George L. Stone, or bearer, the sum of one thousand dollars for money borrowed, the receipt whereof is hereby acknowledged, which sum the said county of Muscatine is obligated to pay on the first day of January, one thousand eight hundred & seventy-four, with interest on said sum of one thousand dollars, at the yearly rate of ten per cent. payable semi-annually at the office of Mess. E. W. Clark, Dodge & Co., in New York, and the faith of the said county of Muscatine is hereby pledged
180 for the semi-annual payment of the interest and the ultimate redemption of the principal.

"In testimony whereof, I, Arthur Washburn, judge of said county, have hereunto set my hand and affixed the seal of said county this 2nd day of January, A. D. 1854.

{ SEAL OF COUNTY } "ARTHUR WASHBURN,
{ OF MUSCATINE. } "*Co. Judge.*

"Attest:
"RICHARD CADLE, *Co. Clerk.*"

Indorsed:

"In consideration that the county of Muscatine has transferred to A. C. Flagg, treasurer, in trust, the stock of the said county in the Mississippi and Missouri Railroad Company the said railroad company hereby guarantees the prompt payment of the interest as it matured, and the eventual payment of the principal of this bond.

"In witness whereof, by virtue of a resolution of the board of directors, the president and treasurer of said company have hereunto set their hands and caused the seal of said company to be affixed at New York, this day of , 185 .

181 { SEAL OF THE } "JOHN A. DIX, *President.*
{ M. & M. R. R. CO. } "A. C. FLAGG, *Treasurer.*"

Now please examine these Muscatine County bonds & say whether the bonds and guaranty are genuine.

Ans. When I gave my evidence-in-chief I could find no record of such guaranty on the railroad company's books, and the stock was not deposited on security, but the bonds shown to me and the guarantee are genuine, and I find John A Dix signed the guaranty as president of the company; still I cannot tell the amount actually guaranteed by the books of the company, and my memory does not recall it. I have been informed that the amount actually signed is one hundred and ten out of the one hundred & fifty thousand issued by the county. I know of no other way of ascertaining except by inspecting the bonds themselves.

Question No. 1 by defendant. In your direct examination you stated that about $552,000 of the consolidated company, the Chicago, Rock Island and Pacific Railroad Company bonds had been retained to pay the 16 per cent. stock dividend; are you not mistaken as to the
182 amount actually kept back? State fully what amount were retained & held by the company for the stockholders & why any of them were paid out.

Ans. Since I made the statement referred to, I find from a more particular & recent examination of the books of the Chicago, Rock Island, and Pacific Railroad Company, that the following sums have been actually paid out of the purchase-money of five and a half millions for the Mississippi & Missouri Railroad.

1st mortgage, eastern division, $1,281,296 71, @ 100		$1,281,296 71
Land grant mortgage, $3,937,180, @ 70		2,756,026 00
2nd mortgage, eastern division, $400,000, @ 80		320,000
Oskalosa division, $697,423 70, @ 62½		424,639 81
2nd mortgage, construction, $694,451 85, @ 30		208,335 55
		4,990,298 07
Amounts paid E. W. Dunham, F. Haven, & Thomas Walker, trustees	$12,000	
Amt. allowed Stanton, Elliott, & Wilson	21,000	
Legal expenses, including att'y's fee here & in Iowa, costs, stamps on deed, &c., &c., up to this time, estimated	25,000	
	$5,048,298 07	
Purchase-money	5,500,000 00	
Balance	$451,701 93	

Of the amount of the purchase-money for the M. & M. railroad,
183 the C., R. I., & P. R. R. Co. have paid out the whole amount, except the said sum of four hundred and fifty-one thousand seven hundred and one dollars & $\frac{93}{100}$. See Exhibit A, hereto attached.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss:*

Subscribed & sworn to by the said Ebenezer Cook, in my presence, & before me, this 17th day of February, A. D. 1868.

[SEAL.] LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

"*Exhibit A.*"

Land grant bonds	$3,617,000	
Income bonds for do	254,000	
Scrip for cupons, convertible	13,870 85	
Cupons due prior to 1863, convertible	17,309 15	
Cupons due Nov. 8th, 1864	35,000	
At 70 c		3,937,180 00
1st mortgage, 1st division	$1,000,000	
Income bonds given for cupons	216,000	
Scrip for cupons, convertible	14,513 28	
Past due cupons, convertible	2,900 93	
Cupons July, 1864, & Jan'y, 1865	5,392 50	
Int. to July 1st, 1865, 6 mos., (both bonds)	42,490	
At par		1,281,296 71
2nd mortgage, eastern division, at 80 c		$400,000 00

184 Oskaloosa division, 1st mortgage	$590,000
Income bonds given for cupons	83,000
Scrip for cupons, convertible	346 33
Past due cupons, convertible	4,992 37
Past due cupons of July, 1864, & Jan'y, 1865	1,085 00
At 62½ c	$679,423 70
2nd mortgage construction bonds	692,000
Scrip convertible into same bonds	2,211 85
Past due cupons of July, 1864, & Jan'y, 1865	240 00
At 30 c	$694,451 85

RECAPITULATION.

1st mortgage, eastern division, $1,281,296 71, @ 100	$1,281,296 71
Land grant mortgage, $3,937,180, @ 70	2,756,026 00
2nd mortgage, eastern division, $400,000, @ 80	320,000 00
Oskaloosa division, $679,423 70, @ 62½	424,639 81
2nd mortgage construction, $694,451 85, @ 30	208,335 55
	4,990,298 07
Amounts paid to E. W. Dunham, F. Haven, & Thomas Walker, trustees	12,000 00
Amount allowed Stanton, Elliott, & Wilson	21,000 00
Legal expenses, including attorney's fees here & in Iowa, costs, stamps on deed, &c., &c., up to this time, estimated	25,000 00
	$5,048,298 07
Purchase-money	5,500,000
Balance	$451,701 93

185 On the same day, to wit, on the sixteenth day of October, A. D. 1867, came the defendants, by Cook and Drury, their solicitors, and filed in said clerk's office the deposition of Blakely Wilson and John Elliott; which depositions are in the words and figures following, to wit:

U. S. circuit court of the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Depositions of witnesses produced, sworn, and examined, under oath, on behalf of the defendants, to be read in evidence on the trial of the above case, taken at the city of New York, on the twenty-seventh day of July, one thousand eight hundred and sixty-seven, by consent of parties.

Charles Tracy appeared as counsel for the defendants.

Deposition of Blakeley Wilson.

Interogatory 1st. What is your name, place of residence, and occupation?

Answer. Blakeley Wilson; I reside in Bergen, Hudson County,
186 New Jersey; & am not in business.

Interogatory 2nd. Were you present at the meeting of bondholders and stockholders of the Mississippi and Missouri Railroad Company, held at New York City, October 18 & 20, 1865?

Answer. I was.

Interogatory 3rd. How large a portion of the bondholders of said company were represented at said meeting?

Answer. About one-half, viz., $3,435,500, out of a total of $6,861,754 64.

Interogatory 4th. How large a portion of the stockholders of said company were represented at said meeting?

Answer. About one-third, viz: 11,675 shares, out of a total of 34,525.

Interogatory 5th. Was the Mississippi & Missouri Railroad Company represented in said meeting as a party acting therein?

Answer. It was not.

Interogatory 6th. For whom did said meeting act, and did it act or profess to act for said company, or on its behalf?

Answer. The meeting acted only for the individual bond and stockholders who were present or represented. It did not act nor profess to act in any manner for the Mississippi and Missouri Railroad Company, nor in its behalf.

187 Interogatory 7th. What information had said meeting as to the amount of the bond debt of said company secured by mortgages on its railroad & other property, and what information had said meeting of the value of such railroad and property, & of the sum it would produce by a sale on the forecloseure of such mortgages, and of the sum which would be obtained for the same by a sale to the Chicago and Rock Island Railroad Company, and of what would be most for the interest of all parties interested as creditors or stockholders of said company?

Answer. The meeting was informed, & acted upon the information, that the amount of the bond debt of the Mississippi & Missouri Railroad Company, secured by mortgages on its railroad and other property, was about $6,900,000, or upwards; and that saidrailroad and property was worth about $5,500,000, and would not produce more than that sum by a sale on forecloseure, and that the Chicago and Rock Island Railroad Company was willing to purchase the same at that price if a title could be made speedily, not otherwise; and that it would be greatly for the interest of the bondholders to have a sale made for that price, and that no interest of the Mississippi & Missouri Railroad Company would
188 suffer thereby; and that there was no chance for the last-named company to make the railroad produce any profit to the stockholders, or furnish any means to the Mississippi and Missouri Railroad Company to pay anything to any other creditors it might have.

Interogatory 8th. What arrangement for the disposition of said railroad and other property was agreed upon by said meeting?

Answer. The meeting agreed upon an arrangement to effect a sale of the said railroad & property by means of a forecloseure of the mortgages thereon, and to ensure the payment by the Chicago & Rock Island Railroad Company therefor of $5,500,000, & appointed a committee of said meeting to arrange the terms of payment for the same, and to attend to the distribution thereof; such arrangement, so agreed on by said meeting, was not an arrangement or agreement of said Mississippi & Missouri Railroad Company, nor of a regular or corporate meeting of its stockholders, but merely an arrangement of the parties represented at said meeting. Said arrangement provided that a certain portion of the pro-

ceeds should be distributed to the stockholders as a concession from
189 the bondholders, who were entitled to retain the whole proceeds.

Interogatory 9th. Why did said meeting concede to the stockholders a portion of the proceeds of the said railroad and other property?

Answer. Such concession was made as a gratuitous favor to the stockholders to save them from a total loss, and to induce them to place no obstacles in the way of a speedy foreclosure.

Interogatory 10th. Did said meeting act or assume to act for any stockholders not there represented, or for the said Mississippi and Missouri Railroad Company?

Answer. It did not.

Interogatory 11th. Did you act on the committee appointed by said meeting to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company?

Answer. I did.

Interogatory 12th. What inducements or considerations were laid before or acted upon by said Mississippi and Missouri Railroad Company in giving its assent to the arrangement made by said meeting?

Answer. The Mississippi and Missouri Railroad Company was under the neesessity of operating said railroad, & doing all things neesessary to maintain and preserve its charter and franchises; and it was the
190 duty of its directors to continue the same at a great burden of expense, without any prospect of advantage to the company, and it was inevitable that a foreclosure & sale would ultimately take place, and any delay of the same would involve said company in useless expense. The company, therefore, was interested to expedite the proceedings, and also to save those expenses in the mean time, both which ends were served by the arrangement made at said meeting, and the acquiescence of the company was formal only, & was known to be without any legal force or efficiency, but only expressed the approval of the directors. I was a director of said company at that time, & know the above to be the fact.

Interogatory 13th. Does the Mississippi & Missouri Railroad Company remain indebted upon said mortgage bonds for any deficit of the proceeds of the sale of said railroad and other property, after the application thereto of such proceeds; and, if so, in what amount?

Answer. The amounts paid upon the mortgage bonds of the Mississippi & Missouri Railroad Company, out of the proceeds of said sale, is far less than the amounts due thereon, & the said bonds remain unpaid, & are debts of said company for the deficit, such deficit being
191 about $2,000,000, which deficiency the decree in this cause requires the company to pay.

B. WILSON.

STATE OF NEW YORK,
City & County of New York, ss:

Subscribed and sworn to by Blakely Wilson, in my presence, & before me, this 27th day of July, 1867.

[SEAL.] WILLIAM W. PEARSON,
Notary Public.

[5 cts. U. S. revenue affixed and cancelled.]

Deposition of John Elliott.

Interogatory 1st. What is your name, place of residence, and occupation?

Answer. John Elliott; reside in the city of New York, and member of the firm of Riggs & Co., bankers.

Interrogatory 2nd. Were you present at the meeting of bondholders and stockholders of the Mississippi and Missouri Railroad Company, at New York, October 18 & 20, 1865?

Answer. I was.

Interogatory 3rd. How large a portion of the bondholders of
192 said company were represented at said meeting?

Answer. From the report of the tellers appointed to ascertain the amount of bonds represented at said meeting it would appear that, of the total issue of $3,612,000, 1st mortgage land grant bonds, $2,770,500 were represented; of $1,000,000, 1st mortgage, 1st division, $120,000 were represented; of $400,000, 2nd mortgage, 1st division, $133,000 were represented; of $590,000, 1st mortgage, Oskaloosa division, $151,000 were represented; of $695,000, 2nd mortgage construction bonds, $261,000 were represented. Parties present claimed to represent $507,000, 1st mortgage, 1st division bonds, but they do not appear to have reported them to the tellers.

Interogatory 4th. How large a portion of the stockholders of said company were represented at said meeting?

Answer. From the report of said tellers it appears that of $3,452,000 of stock, 11,675 shares, or $1,167,500, was represented at said meeting.

Interogatory 5th. Was the Mississippi & Missouri Railroad Company represented in said meeting as a party acting therein?

Answer. It was not; the officers of said company were present
193 at said meeting, but were only consulted and advised with by the bond and stockholders as outside parties.

Interogatory 6th. For whom did said meeting act; and did it act or profess to act for said company, or on its behalf?

Answer. It acted wholly and solely on its own behalf, and not for said company.

Interogatory 7th. What information had said meeting as to the amount of the bond debt of said company secured by mortgages on its railroad and other property, and what information had said meeting of the value of such railroad and property, and of the sum it would produce by a sale on the foreclosure of such mortgages, and of the sum which could be obtained for the same by a sale to the Chicago and Rock Island Railroad Company, and of what would be most for the interest of all parties interested as creditors or stockholders of said company?

Answer. Several parties in attendance had prepared statements wherein the bonded indebtedness of the company, and devising plans for reorganization of the road. From these statements it appeared that the bonded debt of the company amounted to $6,857,000, or thereabouts, the said bonds being a lien on all the property of the company.
194 The estimate value of the property was about five and one-half millions of dollars, and it was generally allowed it would not bring more than this if sold under foreclosure, and if the Chicago and Rock Island would take the property at this price, it would be advisable to sell it to them. It had previously been ascertained, from the officers of the Mississippi and Missouri Railroad Company, that the Chicago and Rock Island company was willing to purchase the road, its lands, equipments, &c., at the price stated, provided a title could be obtained speedily, or without unnecessary delay, and that it would be greatly for the interest of the bondholders to dispose of it at this price, and that no interest of the Mississippi and Missouri Railroad Company could suffer thereby, as it was evident the road could not be made productive to the

stockholders or pay anything to its unsecured creditors, should it have any.

Interogatory 8th. What arrangement for the disposition of said railroad and other property was agreed upon by said meeting?

Answer. The meeting agreed that the road, its lands, equipments, &c., should be sold for five and one-half millions to the
195 Chicago and Rock Island Railroad Company, and that the various mortgages should be foreclosed, and appointed a committee at said meeting to arrange the terms and mode of payment with the Chicago & Rock Island Railroad Company, and to receive from such bond and stockholders as approved of the sale on the terms stated their bonds and stock, and to distribute among such bond and stockholders such amount as they might be entitled to receive. This agreement was the act of the stock and bondholders, and not of the Mississippi and Missouri Railroad Company, and the meeting at which it was agreed was not a corporate one of the stockholders of said road, but solely of the parties represented at said meeting. The agreement provided that a certain amount should be distributed among the stockholders as a concession from the bondholders, who were entitled to the whole proceeds.

Interogatory 9th. Why did said meeting concede to the stockholders a portion of the proceeds of said railroad and other property?

Answer. The concession was made as a gratuity from the bondholders to the stockholders, and to prevent any opposition that might
196 be made by them to a speedy forecloseure of the mortgages; the prevailing idea of the bondholders was that the saving of interest in an early settlement of the matter would be equal to the amount they agreed to give the stockholders.

Interogatory 10th. Did said meeting act, or assume to act, for any stockholder not there represented, or for the said Mississippi and Missouri Railroad Company?

Answer. Not at all.

Interogatory 11th. Did you act on the committee appointed by said meeting to arrange the mode and terms of payment with the Chicago and Rock Island Railroad Company?

Answer. I did.

Interogatory 12th. What inducements or considerations were laid before, or acted upon, by said Mississippi and Missouri Railroad Company, in giving its assent to the arrangement made by said meeting?

Answer. The impoverished condition of the Mississippi and Missouri railroad was such that it could not pay the interest on its bonded debt, and, while the directors felt it incumbent on them to keep the road in good running order, and to do all in their power to maintain and
197 preserve the character of the company, they at the same time felt they could not do so with any prospect of advantage to either the bond or stockholders; and, as a forecloseure of the various mortgages on the road had been threatened by the holders of the bonds secured by said mortgages, and was inevitable, & any resistance or delay would only put the company to useless expense, it was therefore deemed advisable by the directors of the Mississippi and Missouri Railroad Company that the wishes of the bond and stockholders, as expressed at their meeting of 18 & 20 October, 1865, should be complied with so far as they had power to do so; but the action of the said directors was regarded by them as a mere matter of form, as they were well aware they had no authority, as a board, to dispose of said premises, and their action only expressed a willingness on their part to carry out the views of the bond and stockholders, and an assurance to the Chicago & Rock Island Rail-

road, that, so far as they could act in the matter, they would do so. I was at the time a director in the said Mississippi and Missouri Railroad Company, and know the above statement to be correct.

Interogatory 13th. Does the Mississippi and Missouri Railroad
198 Company remain indebted upon said mortgage bonds for any deficit of the proceeds of the sale of said railroad and other property, after the application thereto of such proceeds; &, if so, in what amount?

Answer. The road did not sell for enough to pay its mortgage indebtedness, and the balance on said mortgage bonds still remain unpaid, and are debts owing by said company. The deficiency between the decree and the amount to be received from the Chicago and Rock Island company is about two millions of dollars, which defficiency the decree requires the company to pay.

JOHN ELLIOTT.

STATE OF NEW YORK,
City & County of New York, ss:

Subscribed & sworn to by John Elliott, in my presence & before me, this 27th day of July, A. D. 1867.

[SEAL.] WILLIAM W. PEARSON, *Notary Public.*

[5-cents U. S. revenue affixed & cancelled.]

Endorsed: Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

199 U. S. circuit court of the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Depositions of witnesses produced, sworn, and examined under oath, on behalf of the defendants, to be read in evidence on the trial of the above case, taken at the city of New York on the 20th day of August, one thousand eight hundred and sixty-seven, by consent of parties. The counsel for the plaintiffs furnished cross-interogatories to be submitted to the witnesses, and the same were put accordingly.

Deposition of Blakely Wilson.

First cross-interogatory. You were present at said meetings of said stock and bondholders, and their proceedings are reduced to writing; were the persons who made a report to said meeting as the executive committee of said Mississippi and Missouri Railroad Company, really the executive committee of said railroad company or not; were not you, Blakeley Wilson, a member of the executive committee of said company, and was not that report signed by you or your order or consent?

Answer. I was a member of the executive committee of said
200 railroad company, and, with the other members of that committee, was present at the meetings of bondholders & stockholders. We were there, however, only as individual stock and bondholders, and had no power or authority, nor did we undertake in any manner to act for or in behalf of the Mississippi and Missouri Railroad Company in any part of the proceedings of the meetings. By a resolution of the meeting

of 18th October the executive committee were asked to state their opinion as to the advisability of selling the road. They did so in the communication published with the proceedings of the meeting of 20th October, & that communication was signed by me.

Second cross-interogatory. Was John A. Dix, whose report or letter is annexed to the proceedings of said meeting, by a resolution therein set forth, the real president of said railroad company, and do you mean to have us understand that either the real president wrote no such letter or that the same is fictitious?

Answer. John A. Dix was the president of said railroad company; at the meeting of 20th October he stated that he would prepare a letter to the bond and stockholders, which by resolution was ordered to be published with the proceedings, but it was not read at the meeting. This is all I can say of my own knowledge regarding said letter.

201 Third cross-interogatory. Did not the bondholders, or most of them, sign the agreement with Blakeley Willson, John Elliott, and George W. Stanton, of the date of first November, 1865, and was not the said agreement so signed by them executed by both the committee and those bondholders who signed it? Have not all or nearly all the bondholders of said Mississippi and Missouri Railroad Company, who signed said agreement, surrendered their bonds, & taken, in lieu thereof, the bonds of the Chicago, Rock Island, and Pacific Railroad Company according to the terms of said agreement?

Answer. The greater part of the bondholders signed the agreement with Stanton, Willson, & Elliott, committee, (not of the Mississippi and Missouri Railroad Company, but of the individual bond and stockholders who signed said agreement,) and the said agreement so signed by them was executed by both the said committee and the bondholders who signed it. Said agreement was not between the bondholders and the Mississippi and Missouri Railroad Company, but between its signers as individuals and the committee representing said signers and them only. Nearly all the bondholders who signed said agreement have surrendered their bonds, and taken in lieu thereof the bonds of the Chicago,

202 Rock Island, and Pacific Railroad Company according to the terms of said agreement, but they have not done or intended to do any act which would deprive them of their lieu upon any assets of the Mississippi and Missouri Railroad Company for the balance still remaining unpaid of their claims against said company.

[SEAL.] B. WILSON.

STATE OF NEW YORK,
City and County of New York, ss:

Subscribed and sworn to by Blakeley Wilson, in my presence & before me, this 28th day of August, A. D. 1867.

WILLIAM W. PEARSON,
Notary Public.

[5-cents U. S. revenue affixed & cancelled.]

Deposition of John Elliott.

First cross-interogatory. You were present at said meetings of stock and bondholders, & their proceedings are reduced to writing. Were the persons who made a report to said meeting as the executive committee of said Mississippi and Missouri Railroad Company really the executive committee of said railroad company or not; were not you,

203 John Elliott, a member of the executive committee of said company, and was not that report signed by you or your order or consent?

Answer. They were the executive committee of the Mississippi and Missouri Railroad Company, & made the report referred to in compliance with request of the meeting of the stock and bondholders of the Mississippi and Missouri Railroad Company held on the 18th October, 1865, and my name was affixed to said report with my fullest consent.

Second cross-interogatory. Was not John A. Dix, whose report or letter is annexed to the proceedings of said meeting, by a resolution therein set forth, the real president of said railroad company, and do you mean to have us understand that either the real president wrote no such letter or that the same is ficticious?

Answer. John A. Dix was the real president of the Mississippi and Missouri Railroad Company, and made the remarks attributed to him at the meeting of the bond & stockholders of the Mississippi and Missouri Railroad Company held on 20 October, 1865. The statement which he referred to as having prepared, was not read at the meeting, and formed no part of its proceedings. I do not question the fact of said
204 statement having been written by him.

Third cross-interogatory. Did not the bondholders, or most of them, sign the agreement, with Blakeley Wilson, John Elliott, and George W. Stanton, of the date of first November, 1865, and was not the said agreement so signed by them executed by both the committee and those bondholders who signed it? Have not all or nearly all the bondholders of said Mississippi and Missouri Railroad Company who signed said agreement surrendered their bonds, and taken in lieu thereof the bonds of the Chicago, Rock Island, and Pacific Railroad Company, according to the terms of said agreement.

Answer. The agreement of first November, 1865, was between the bond and stockholders of the Mississippi and Missouri Railroad Company, and George W. Stanton, jr., Blakeley Willson, and John Elliott, who were appointed a committee at the meeting of the Mississippi and Missouri bonds and stockholders, held on 20th October, 1865, to arrange mode and terms of payment with the Chicago and Rock Island Railroad Company, and to make arrangements with some trust company to receive bonds and stock of the Mississippi and Missouri railroad from parties assenting to the proposed arrangement, and in acting in said
205 capacity the said Stanton, Willson, and Elliott were entirely distinct and separate from the executive committee of the Mississippi and Missouri Railroad Company. Most of the bond and stockholders of the Mississippi and Missouri Railroad Company have signed the agreement between themselves and the said Stanton, Willson, and Elliott committee, who also signed it, and most all the bondholders of the Mississippi and Missouri Railroad Company have surrendered their bonds, and received the bonds of the Chicago, Rock Island & Pacific Railroad Company, but said bondholders did not intend thereby to relinquish their claims against the said Mississippi and Missouri Railroad Company, unless the agreement between themselves and the stockholders of the Mississippi and Missouri Railroad Company and the said Stanton, Willson, and Elliott committee was fully carried out. In other words, they were entitled to more than they received, and any concession to the stockholders was a gratuity which, if subverted from the original purpose, should revert to themselves.

JOHN ELLIOTT.

STATE OF NEW YORK,
City and County of New York, ss:

206 Subscribed and sworn to by John Elliott, in my presence & before me, this 20th day of August, A. D. 1867.

[SEAL.] WILLIAM W. PEARSON,
Notary Public.

[Five cents U. S. revenue affixed and cancelled.]

Endorsed: Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

On the same day, to wit, the 16th day of October, 1867, came the plaintiffs by Grant & Smith their solicitors, and filed in said clerk's office their exceptions to the depositions of Blakeley Wilson and John Elliott, which exceptions are in the words and figures following, to wit:

In the circuit court of the United States for the District of Iowa.

MARK HOWARD AND OTHERS
ag't
THE MISSISSIPPI & MISSOURI RAILROAD Company & others.

The Plaintiffs except to the following parts of the deposition of John Elliott:

207 1st. To the answer of Elliot to the third interogatory, because the proceedings of said meeting are reduced to writing, and the amount of stock and bonds represented at said meeting are set forth in said proceedings, and the written paper is the best evidence; the question does not seek to show an error in said proceedings, as the witness' statement agrees with the paper writing; he made his answer from it, he says so, and he merely corroborates a fact which is not disputed.

2nd. To the answer to the fourth interogatory the plaintiffs except for the same causes.

3rd. The plaintiffs except to the answer to the fifth interogatory, because the record of the meeting referred to in the previous questions, and already in evidence, shows who was represented in the meeting, and, the facts not being disputed, it is a question of law what was the legal effect of the proceedings of the meeting.

4th. The plaintiffs except to the sixth question and answer, because the proceedings of the meeting being in writing, the court & not the witness is the property party to determine for whom the meeting
208 acted, or professed to act. The opinion of the witness is a mere gratuity.

5th. The plaintiffs except to the seventh question and answer, because the proceedings of said meeting are in writing, and contain all the facts sought to be elicited by the question, and is the best evidence thereof. There is no suggestion by the witness of any fact outside of the proceedings of the meeting, which, being reduced to writing, is the best evidence.

6th. The plaintiffs except to the eighth question and answer, because the written proceedings of the meeting referred to show what arrangement was made for the disposition of the property, and that is the best evidence; the plaintiffs except to the latter part of the answer beginning at the words, "this arrangement was the act of the stock and bondholders," &c., down to the end of the answer, because it is not respon-

sive to the question, and is a gratuitous interpretation of a contract and a mistaken interpretation at that.

7th. The plaintiffs except to the 9th interogatory and answer, because both questions and answer seek of the witness a legal interpretation of a paper writing which explains itself. The reason why such concession was made to the stockholders is totally immaterial. The answer
209 of the witness shows that he don't know the law, and if he did we insist that it shall be interpreted by the court and not by him.

8th. The plaintiffs except to the 10th question & answer, because the written proceedings of the meeting show for whom it assumed to act; that is the best evidence. The assistance of the witness in attempting to aid the court in the interpretation of the said proceedings is gratuitous.

9th. The plaintiffs except to the eleventh question and answer, because it appears from the written proceedings that the witness did not act in said committee, and his oral evidence proves it to be so; he proves a fact in writing not denied.

10th. The plaintiff excepts to the 12th question and answer, because the written proceedings of said meeting showed what inducements were laid before it & acted upon by the said company. The fact is not disputed and requires not the assistance of the witness. Also to all the answer from the words "while the directors," &c., down to the end the plaintiffs except, because it is a gratuity, not responsive to the question.

11th. The plaintiffs except to the 13th question and answer,
210 because the question and answer both seek to give a legal opinion on an act, or to assist the court in interpreting the legal effect of an act. It may be proper enough for the witness to answer that when a debt is seven millions a payment of five millions leaves a balance; but the court probably can cipher that sum as well as the witness; but when the witness, with a view to interpret other facts which may discharge that debt, is laying down law, and not telling facts, the plaintiffs object to the part of the answer of the witness which says that the decree provides for the defficiency, because the decree shows for itself what it does provide for, and in that respect, when looked into by the court, will contradict him; and this is another reason why the court should not allow him to assist us with his legal conclusions.

GRANT AND SMITH,
Att'ys for Pl'ffs.

Endorsed: Filed Oct. 16, 1867.

W. G. WOODWARD, *Clerk.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

211 The plaintiffs except to the following parts of the answer of Blakeley Wilson to the cross-interogatories of plaintiffs:

1st cross-interogatory. To the following words to the first cross-interogatory, "we were there, however, only as individual stock and bondholders, and had no power or authority, nor did we undertake in any manner to act for or in behalf of the Mississippi and Missouri Railroad Company, in any part of the proceedings of the meeting."

1st. Because they are not responsive to the question.

2nd. Because the witness undertakes to give an opinion as to the legal effect of the proceedings of a meeting which are reduced to writing, and

the construction of which is a question of law for the court, and not for the witness.

Ans. to 1.

2nd cross-in. The plaintiff excepts to the following parts of the answer to the second cross-interogatory, "But it was not read at the meeting,"

1st. Because it is not responsive to the question. 2nd. Because the proceedings of the meeting in writing show that it was not read, and the written paper is the best evidence.

Answer to 3rd cross-interogatory. The plaintiff excepts to the
212 following parts of the answer to the third cross-question:

To the words, "Not of the Mississippi and Missouri Railroad Company, but of the individual bond and stockholders," because they are not responsive to the question, but the useless sticking in of an opinion of the witness.

Also to the words, "Said agreement was not between the bondholders and the Mississippi and Missouri Railroad Company, but between the signers as individuals; and the committee represented said signers and them only,"

Because they are not responsive to the question; because they undertake to give an opinion as to the legal effect of a contract.

Also to the words, "But they have not done, or intended to do, any act which would deprive them of their lien upon any assetts of the Mississippi and Missouri Railroad Company for the balance still remaining unpaid of their claims against said company,"

1st. Because they are not responsive to the question.

2nd. Because they undertake to give the opinion of the witness as to the legal effect of signing the contract referred to, which the witness had already given, which he ought to have known was the duty of the court and not the witness, and which opinion is obtruded upon the
213 court—first, in the answer of the witness; second, in his direct evidence; and, third, stuck in, in response to a cross-question not asking it, for the purpose of influencing the judgment of the judgment.

GRANT,
For the Plaintiffs.

The plaintiffs also except to the following parts of the answer of John Elliott to the cross-questions:

Answer to 2nd cross-i. To the words in the answer to second cross-question, "The statement that he referred to was not read to the meeting, and formed no part of its proceedings,"

Because it is not responsive to the question; because it is the province of the court, and not the witness, to determine on reading the proceedings whether the statements formed part of their proceedings.

Answer to third cross-question. The plaintiffs except to the following words in the answer to third cross-question, "And in acting in said capacity the said Stanton, Willson, and Elliott were entirely distinct from the executive of the Mississippi and Missouri Railroad Company,"

Because the words are not responsive to the question, but obtruded the opinion of the witness on the attention of the court.

214 Also to the words in said answer, "But the said bondholders did not intend thereby to relinquish their claims against the said Mississippi and Missouri Railroad Company, unless the agreement between themselves & the stockholders of the Mississippi and Missouri Railroad Company and the said Stanton, Willson, and Elliott committee, was fully carried out; in other words, they were entitled to more than they received, and any concession to the stockholders was a gratuity,

which, if subverted from the original purpose, would revert to themselves,"

Because the words are not responsive to the question.

Because the witness does not state a fact, but gives an opinion in the legal effect of a contract; which opinion is not only a "gratuity," but incorrect law.

GRANT, *for Pl'ffs.*

Endorsed: Filed Oct. 16, 1867.

215 The deposition of James B. Edmonds is on the files of said cause in said clerk's office, but there is no record by endorsement thereon or otherwise in said office showing when or by whom the same was filed. Said deposition is in the words and figures following, to wit:

U. S. circuit court for dist. of Iowa.—In equity.

MARK HOWARD
vs.
GEO. W. STANTON ET AL.

The deposition of Jas. B. Edmonds, of Iowa City, Iowa, taken by consent of parties this 20th day of May, 1867, on the part of the defendants.

Interogatory 1st. What is your name, occupation, & place of residence?

Ans. My name is James B. Edmonds; occupation, attorney-at-law; residence, in Iowa City in the State of Iowa.

Int. 2. Do you know the parties to this suit?

Ans. I have slight acquaintance with def'ts Stanton and Elliott; do not know the pl'ff; only know the officers of def'ts' corporation.

Int. 3d. Look upon the blank certificate or receipt of the Union Trust Company of New York, marked Exhibit No. 2, to Ebenezer Cook's
216 deposition in this cause, and state if you ever saw one or more of same kind filled up and numbered and signed by said Union Trust Company. If yea, you may state what you know about such certificates or receipts having passed in the market as negotiable paper. State fully and about any particulars within you knowledge, & whether you knew of any such transfers before the commencement of this suit.

Ans. I do know that on the 25th or 26th of June, 1866, Iowa and Powesheik Counties severally surrendered $100,000 00 of stock in the M. & M. R. R. Company at the office of said Union Trust Company, in the city of New York, taking therefor certificates filled up and signed by said Union Trust Co., or some of its officers, for various amounts, to suit the wants of the person so surrendering stock in said R. R. co. In behalf of some persons who held claims Iowa and Poweshiek Counties, I made inquiries at said Union Trust Company's office, & was there told by its officers that said certificates were made to bearer, so they might be put in the market as negotiable paper by those desiring to do so, & that the holder would get the bonds of the Ch. & R. I. R. R. Co. After getting this and similar information of the officers of the Chicago
217 and Rock Island Railroad Company, several of said certificates of Iowa County and Poweshiek County were purchased upon this assurance and information which I thus had obtained, & purchased some myself, and sold the same again before the first day of July, 1866.

I do not remember the amount which I purchased or saw purchased of the agent of said Iowa and Poweshiek Counties prior to July 1st last, but they amounted to several thousand dollars from each county, each having $16,000 of said certificates for sale, and offering, through their agents there, at New York, to sell the same at about 90 cents on the dollar, cash, or at par if the purchaser paid in the bonds or cupons of said counties issued to aid in the construction of said M. & M. R. R. Co. In the cases of purchase made, so far as I personally knew, the purchasers were assured that they, as "bearer," would get the bonds mentioned in the certificates soon as they were prepared and ready for issue, and that upon the faith of such representation, and the reading of the certificates to "bearer," the purchases were made. I heard of several other sales of these certificates prior to 1st of July last, but was not personally witness to them.

JAS. B. EDMONDS.

218 Subscribed and sworn to before me 20th May, 1867.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the twenty-third day of October, A. D. 1867, came George Bliss, Clark Durant, Charles W. Durant, William Elliott, Henry Vanderveer, Robert Murray, and Betsey Tracy, by J. B. Edmonds, their solicitor, and file their petition in said cause; which petition is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.—In chancery.

MARK HOWARD & JOHN WEBBER
vs.
THE CITY OF DAVENPORT, THE M. & M. RAILroad Company, the Chicago, R. I., & Pacific R. R. Co., George W. Stanton, jr., John Elliott, and Blakeley Wilson.

Petition to be made parties & to participate in the fund.

To the said circuit court:

Your petitioners, George Bliss, Clark Durant, Charles W. Durant, all citizens of the State of New York; William Elliott, a citizen of the State of Pensylvania; Henry Vanderveer, a citizen of the State of New
219 Jersey; and Robert Murray, a citizen of the State of Illinois, humbly represent that they each are the creditors of the Mississippi and Missouri Railroad Company, one of the defendants, which is, and for more than a year last past has been, an insolvent corporation, and which over one year ago permitted all its property of every description, including its franchises, to be sold to pay a portion of its debts, to secure which a mortgage had been given by said company upon all its property and franchises.

That said M. & M. R. R. Co. are the debtors of your petitioners as the guarantors of county and city bonds owned and held by your petitioners, which were negociated and sold by said last-named R. R. co., and purchased by your petitioners respectively on the faith of the written guaranty of said R. R. co.

That said bonds were issued by county or city to said R. R. co. in payment for subscription to stock in said R. R. co. That said counties, to wit, Johnson and Muscatine, and Iowa City, are all corporations

under the laws of Iowa, and citizens thereof, and are all wholly insolvent.

That said county of Muscatine issued its bonds to said R. R. co. to the amount of $100,000 00; and said county of Johnson
220 to the amount of $50,000 00; and said Iowa City to the amount of $50,000 00; all of which were guaranteed and negociated by said R. R. co. in manner aforesaid.

That of said bonds issued by said county of Johnson, your petitioner George Bliss is the owner of eighteen, and your petitioner Henry Vanderveer, of six, all of which are matured, and judgment of this court rendered thereon for both principal and interest, amounting to over thirty thousand dollars.

That of said bonds of Muscatine County, your petitioners, Clark Durant is the owner of fourteen; Charles W. Durant, of seven; Robert Murray, of six; and William Elliott, of six; each bond for one thousand dollars, with the accumulated interest thereon for several years.

That of said bonds of Iowa City, your petitioners Charles W. Durant is owner of fourteen; Clarke Durant, of nine; & George Bliss, of eight; each bond for $500, with several years accumulated interest thereon.

That against said Muscatine County & Iowa City judgments have been rendered in this court in favor of the said holders, respectively, for the interest cupons maturing upon said bonds for several years,
221 & down to January 1, 1867. And upon said judgments, or one of each kind, executions have been issued, and have been returned nulla bona, there being no property out of which said judgments could be satisfied.

That after the sale of the property and franchises of said M. & M. R. R. Co., as aforesaid, and the agreement to appropriate a portion of the proceeds of said sale among the stockholders of said R. R. co., as set forth more particularly in the bill of complaint in the foregoing entitled cause, several creditors of said last-named railroad company, holders of the bonds of said city & counties, or other cities and counties, guaranteed by said R. R. co., filed bills in this court for equitable relief, and asking that said fund, about to be distributed among the said stockholders, be declared a fund which, in equity, ought to be applied to the payment of the debts of said R. R. co., including not only such as were in judgment, but other debts due and not yet due, of which bills that in the above-entitled cause was one based upon guaranties of city or county bonds, all of same tenor.

That at the May term of this court, 1867, your petitioners, by consent of both complainants and defendants, were made co-com-
222 plainants by order of this court, in one of said causes, to wit, in cause No. 65, on equity calendar, wherein Harriet Le Conte and Margaret I. Nisbet were complainants in a bill asking relief, the same as prayed for in foregoing entitled cause against same defendants; that your petitioners did not procure judgments against said railroad company, for the reason that said company had no property upon which judgments would be a lien; and much of their said claims was still immature, & because, by consent of said parties, plaintiff & defendant, and the consent of this court, your petitioners were allowed to become co-complainants and ask for same relief & upon the same baisis as though such judgments had been rendered—the defendants not disputing the indebtedness, and willing that all creditors should share alike in any funds by them held, which might, in equity, be adjudged to the creditors of said M. & M. R. R. Co.; that said cause, wherein your petitioners were complainants, was not pressed to a hearing in consequence of an

understanding or agreement made by the defendants with the attorneys of the several complainants in said several bills, that the said several causes should abide the trial and decree of one cause, to wit, the
223 foregoing entitled cause; that complainants and defendants in foregoing entitled cause have permitted one Joseph Young, a creditor, on same footing with your petitioners, without judgment against said R. R. co., to become a co-complainant therein, &, since the last term of this court, to add the numbers and description of other bonds owned and held by other creditors of said R. R. co., with a view to sharing pro rata in the distribution of said fund, thereby enlarging the bill in foregoing entitled cause, so as to include the several bonds of all those creditors who filed bills in this court, to reach said fund, save & except the said bonds of your petitioners, and also to include many bonds of other creditors upon which no judgments were rendered, and upon which no bill was filed to reach said fund.

That said M. & M. R. R. Co. are the debtors upon city and county bonds, by them guaranteed as aforesaid, & more particularly described in the bill and amendments in foregoing cause, to an amount exceeding a half million of dollars, including the bonds of complainants and your petitioners, of which only a small portion is due, and of the
224 amount so due only a few thousand dollars are reduced to judgment against said R. R. co., and only to the extent mentioned in complainants' bill, so far as known to your petitioners; that on or about the 1st of January, 1856, said Johnson County and Iowa City each issued $50,000 of bonds to said M. and M. R. R. Co., & prior to that time, said Muscatine County and City, & said Scott County and city of Davenport issued their said respective bonds aforesaid, all in payment of stock in said R. R. co., all of which stock was pledged for the payment of said bonds, and the fund of sixteen per cent. upon all of such stock would be applied by defendants to the payment of said bonds, only for the interposition of a court of equity, and the seizure of said entire fund to be applied to the payment of the debts of said R. R. co.; that all of said fund is equitably a trust fund which a court of equity will see first applied to the payment of the debts of said R. R. co., and to its stockholders, or pro rata to each; that said R. R. co. is practically dissolved, and is so considered and treated by all its stockholders, & at most has only a technical legal existence for finally closing its affairs, and the fund in the hands of the trustees arising from
225 the sale of the property said R. R. co. should be, as your petitioners are advised be, by a court of equity applied to the payment of all creditors of said R. R. co. equally, even although a small portion only, or no portion whatever of their claims be in judgment.

Your petitioners further show, that neither said R. R. Co. nor any defendant herein object to your petitioners or any creditor of said R. R. Co. being made a co-complainant in this case, and sharing pro rata, according to the amount of their claim, with the complainants herein in any or all the money, bonds, or property in their hands, which this court may order to be applied to the payment of any debt of said R. R. co.

Your petitioners further show, that their several bonds aforesaid, and the written guaranties thereon, by said M. & M. R. R. Co., are of the same tenor and effect as those set forth in complainants' bill.

That injunctions have been issued by State courts against the supervisors of said counties, and the city council of Iowa City, restraining them from laying any tax to pay said bonds, notwithstanding this court has rendered judgment on said bonds against said city &

226 counties so far as they have been due, and your petitioners are unable to collect their dues on said bonds, except from the guarantor, said R. R. Co., and having shown themselves entitled to a distributive share of said fund, the same as complainants, your petitioners reiterate the truth of the several allegations in said bill, and ask that they may adopt the said bill with these additional averments as their own, and pray that they be allowed to become co-complainants in said bill, and be allowed to prove the amount of their said claims with the said complainants, and to share pro rata in the said fund or proceeds thereof, upon the same terms and baisis of those already joined as complainants, and that they have such other and further relief, the same as said complainants, or as to this court may seem equitable.

EDMONDS AND RANSOM,
For Petitioners.

STATE OF IOWA, *Polk County, ss:*

I, J. B. Edmonds, being duly sworn, say the foregoing petition is true as I verily believe; that I, as one of the firm of Edmonds and Ransom, have procured the several judgments mentioned for peti-
227 tioners, and for them procured their admission, as co-complainants in said cause, No. 65, and that I am familiar with most of the facts above stated, better than petitioners themselves.

J. B. EDMONDS.

Subscribed & sworn to, by J. B. Edmunds, before me this 23rd day of October, 1867.

W. G. WOODWARD, *Clerk.*

(To the foregoing petition is added the following:)

In the same cause, above entitled, and by stipulation of parties, and by leave of the court given in the above petition for intervention, Betsey Tracy avers that she is a citizen of the State of Illinois, and is the owner of eighteen bonds of the said county of Muscatine, of $1,000, each of the same class of bonds issued by Muscatine County, and in above petition referred to; and three bonds of Iowa City of the same class, and issue of bonds in above petition described, of $500 each; that over $20,000 is due on the said bonds of Muscatine County, and over $2,100, on said bonds of Iowa City; that all of said bonds are guaranteed by said M. & M. R. R. Co., and are now held by said Tracy; that said Tracy, by consent given in said petition, and makes the aver-
228 ments therein, made by Bliss and others, & also asks the relief therein prayed, & asks that she may have a share of & participate in said fund as said other creditors do, & in proportion to her said interest.

EDMONDS AND RANSOM,
Att'ys for Tracy.

Endorsed: Filed Oct. 23, 1867.

W. G. WOOWARD, *Clerk.*

229 On the thirteenth day of May, A. D. 1868, came Volkert P. Douw, Christopher Y. Lansing, Jared F. Harrison, Joseph W. Clark, Harriet Le Conte, and Margaret I. Nisbet, by John N. Rogers, their solicitor, and filed in the office of said clerk their petition, which was by the court ordered to be filed as of this day, to wit, the twenty-third day of October, A. D. 1867, which petition is in the words & figures following, to wit:

Circuit court of the United States, district of Iowa.

MARK HOWARD & ALS.
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY & ALS. } In equity.

To the judges of said circuit court:

Your orators, Volkert P. Douw, and Christopher Y. Lansing, citizens of the State of New York, Jared F. Harrison, also a citizen of the State of New York, and Joseph W. Clark, a citizen of the State of Massachusetts, and your oratrixes, Harriet Le Conte and Margaret I. Nisbet, citizens of the State of Georgia, come now and pray leave of said court to join in the above-entitled suit, and the bill of complaint therein,
230 as joint complainants with said Mark Howard and others, hereby offering, each for himself and herself, to contribute their just and ratable share of the expenses thereof.

And reaffirming and adopting as their own all and singular of the allegations and charges of the said bill of complaint, and of the amendments thereto by Joseph Young and others, they further, severally and respectively, represent and show to your honors as follows, to wit:

1st. The said Volkert P. Douw and Christopher Y. Lansing represent and aver, that they are the owners and holders of eight certain bonds executed by the county of Muscatine, in the State of Iowa, dated January 2, A. D. 1854, each for the sum of one thousand dollars, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, and the principal being payable January first, 1874, which said bonds are respectively numbered 20, 21, 22, 26, 48, 49, 50, & 84, together with unpaid cupons or interest warrants attached thereto. Said bonds are of the same class, and in the same form precisely as the bonds of said Muscatine County, set forth in the petition or claim of Joseph Young filed herein, (to which your orators, said Douw and Lansing, crave leave to refer, and to the copy of said bonds attached
231 hereto,) and are in like manner, and in the same form as said bonds, so set forth in said Young's petition, & guaranteed in writing on the face therof by the said Mississippi & Missouri Railroad Company.

Said Douw and Lansing further represent and show that said county of Muscatine has, for a series of years last past, wholly failed and neglected to pay the interest accruing upon said bonds, and that they have recovered in this court certain judgments against said county, on the due and unpaid cupons, and one of said judgments is also against the said railroad company, on its said guarantee. Said judgments are due and wholly unpaid, and as follows, to wit: A judgment in favor of said Douw and Lansing against said county, rendered October 24th, 1864, for the sum of two thousand and thirty-two dollars ($2,032) damages, and fifty-two $\frac{92}{100}$ dollars costs; a judgment in favor of said Christopher Y. Lansing against said county, rendered May 10, 1865, for fifteen hundred and seventy-three $\frac{50}{100}$ dollars damages, and fifty-three $\frac{55}{100}$ dollars costs.

And a judgment in favor of said Douw & Lansing against said county and said railroad company, rendered May 16th, 1867, for nineteen hundred and seven $\frac{35}{100}$ dollars damages, and thirty-six $\frac{75}{100}$ dollars costs.
232 That there is already due & unpaid to said Douw and Lansing upon said bonds, cupons, & judgments, upwards of the sum of seven thousand dollars, and that the total amount of said bonds, judg-

ments, and unpaid cupons, down to the present time, is about the sum of sixteen thousand dollars. That neither the said county or the said railroad company has any property which can be reached by execution.

2nd. And your orator, the said Jared F. Harrison, shows and represents that he is the holder and owner of eight certain other bonds of said county of Muscatine, of the same kind, class, and form precisely as those held by said Douw and Lansing, and in like manner guaranteed by said railroad company, and of the unpaid cupons thereon, which said bonds are numbered respectively Nos. 86, 89, 90, 91, 92, 93, 96, & 97, and bear date also January 2nd, 1854, and are for the sum of one thousand dollars each, with interest at ten per cent. per annum, payable semi-annually, and are due and payable January 1st, 1874. That said county has, for a series of years now last past, failed & neglected to pay the accruing interest thereon, and there is now due and unpaid to your orator for such accrued interest upwards of five thousand
233 dollars, and that the total amount of said bonds, with accrued interest thereon, is about the sum of fourteen thousand dollars.

And your orator, the said Joseph W. Clark, shows and represents that he is the holder and owner of thirteen (13) bonds made and issued by the county of Scott, in the State of Iowa, bearing date October 1st, 1853, & payable in fifteen years from date, each for the sum of five hundred dollars, with interest thereon at the rate of ten per cent. per annum, payable semi-annually, which said bonds are respectively numbered No. 9, 29, 33, 30, 34, 39, 42, 43, 44, 45, 46, 47, and 48, together with the unpaid interest cupons or warrants thereon. Said bonds are of the same kind and class, and in the same form precisely as said bonds of Scott County, set forth in the petition of said Young, to be made a party plaintiff herein, and are in like manner and form guaranteed by the Mississippi & Missouri Railroad Company. That the interest thereon, for a series of years last past, is due and unpaid, and the said Joseph W. Clark has recovered a judgment thereon, or on the cupons therefor, in this court, which judgment was rendered against said Scott County October 19th, 1865, for twenty-two
234 hundred and eighty-four dollars ($\$2,284\frac{00}{100}$) damages, and thirty-nine dollars costs, and is still due and wholly unpaid; and the total amount of interest due and unpaid on said bonds, including said judgment, is now about five thousand dollars, ($5,000,) and the total amount of principal & interest is about the sum of eleven thousand dollars ($11,000.)

And the said Joseph W. Clark further represents and shows that he is also the owner and holder of a certain other bond, made and issued by the county of Johnson, in the State of Iowa, bearing date September 1st, 1853, and payable September 1st, 1863, being for the sum of one thousand dollars, ($1,000,) with interest at ten per cent. per annum, payable semi-annually, with the unpaid interest warrants, or cupons, belonging thereto; said bond is numbered twelve (12) and is of the same class and form precisely as the bonds of said Johnson County, set forth in the petition of said Young, to be made a party plaintiff herein, and is in like manner and form guaranteed by the Mississippi and Missouri Railroad Company. Said bond is now due & wholly unpaid, & said county and railroad company are indebted to your orator thereon in about
235 the sum of fifteen hundred dollars for principal & interest.

4th. And your oratrix, the said Harriet Le Conte, represents and shows that she is the holder and owner of two certain bonds made and issued by the city of Muscatine, in the State of Iowa, bearing date December 31st, 1855, and payable January 1st, 1876, being each for the

sum of one thousand dollars, ($1,000), with interest thereon, at the rate of ten per cent. per annum, payable semi-annually, together with the unpaid cupons or interest warrants thereon. That said bonds are numbered respectively Nos. one (1) and two (2), and are of the same class and form precisely as the bonds of said city of Muscatine, set forth in the petition of said Young, to be made a party plaintiff herein; and are, in like manner and form, guaranteed by the Mississippi and Missouri Railroad Company.

That the intrest on said bonds for several years last past is due and unpaid, and your oratix, under the name of "H. L. Le Conte," has recovered a judgment against said city of Muscatine in this court for certain of the cupons thereon, which judgment was rendered January 12th, 1864, for the sum of one thousand & twenty-eight & twenty-five
236 one hundredths dollars ($1,028$\frac{25}{100}$) damages, and dollars costs, and is in full force and wholly unsatisfied. That there is due to your oratrix for interest on said bonds, including said judgment, about the sum of two thousand dollars, and that the amount of the principal and interest thereon is about four thousand dollars.

And your said oratrix further represents & shows that she is also the holder & owner of fifteen certain bonds made and issued by the city of Davenport, in the State of Iowa, bearing date August 1st, 1853, and payable August 1st, 1865, with interest thereon at the rate of ten per cent. per annum payable semi-annually. Said bonds are numbered respectively Nos. 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 80, 81, 104, 106, & 57, and are for the sum of five hundred dollars each, except said bond No. 57, which is for the sum of one thousand dollars. Said bonds belong to the same class, and are of the same form precisely as the bonds of said city of Davenport, set forth in the petition of said Young, to be made a party plaintiff herein; and are, in like manner and form, guaranteed by the Mississippi & Missouri Railroad Company. Your oratrix is also the holder and owner of the due and unpaid cupons, or interest warrants belonging to said bonds, and of a certain judgment
237 in this court heretofore recovered by her under the name of "H. Le Conte," against said city of Davenport on certain of the cupons on said bonds, together with other cupons belonging to other and like bonds of said city, which judgment was rendered May 9th, 1866, for the sum of nineteen hundred and seventy dollars ($1,970) damages, & dollars costs, and is in full force, & wholly unsatisfied; and the total amount due to your oratrix for principal and interest of said bonds, including said judgment, is about the sum of fourteen thousand dollars.

5th. And your oratrix, the said Margaret I. Nisbest, represents and shows that she is the holder and owner of six certain bonds, made and issued by said city of Davenport, also bearing date August 1st, 1853, and due August 1st, 1865, being numbered respectively Nos. 29, 30, 17, 18, 19, & 20, whereof Nos. 29 & 30 are for the sum of five hundred dollars, & the remainder for the sum of one thousand dollars each, all with interest at the rate of ten per cent. per annum, payable semi-annually; said bonds are of the same class and form, and in like manner guaranteed by said railroad company, as the bonds of said city
238 of Davenport, set forth in the petition of said Young, to be made a party plaintiff herein.

And the said Margaret I. Nisbet is also the owner and holder of the due and unpaid cupons belonging to said bonds, except certain thereof which are included in the judgment of Harriet Le Conte, against the city of Davenport in this court, hereinbefore set forth, the same having

been sued on by the said Harriet Le Conte with the consent of your oratrix, and for her benefit. That the amount due & owing to your said oratrix on said bonds and cupons is about the sum of nine thousand and five hundred dollars ($9,500.)

Wherefore your said orators and oratrixes pray to be joined as plaintiffs in this suit, and that an account may be taken herein of the several amounts due & owing to them respectively on the said bonds, cupons, and judgments, as well for principal not yet matured, as for principal & interest already due; and that said fund or sum of five hundred and fifty thousand dollars, or thereabouts, in the bill of complaint of Mark Howard and al. herein mentioned, arising from the sale of the said Mississippi & Missouri railroad, & wrongfully, and in fraud of
239 your petitioners' rights, intended to be distributed among the stockholders in said railroad company, may be adjudged to be applicable in the first instance to pay the said bonds, cupons, and judgments of your said petitioners on the same footing, and, pari passu, with those belonging to the other plaintiffs herein, and for such other and further relief in all respects as to the court shall seem just and equitable, and as shall be awarded with said other parties plaintiff herein.

And your petitioners, as in duly bound, will ever pray, &c.

JOHN N. ROGERS,
Solicitor for said Petitioners.

Endorsed: Filed May 13th, 1868, as of Oct. 23d, 1867, by order of court.
W. G. WOODWARD, *Clerk.*

240 On this day, to wit, the twenty-fifth day of October, A. D. 1867, came the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott & Blakeley Wilson, by John P. Cook, their solicitor, and file in the said clerk's office their answer to the petitions of Christopher Y. Lansing, Jared F. Harrison, George Bliss, Clark Durant, and others, intervening in this cause, which answer is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.—In chancery.

MARK HOWARD AND JOHN WEBBER *vs.* THE CITY OF DAVENPORT, THE M. & M. RAILROAD COMPANY, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakely Wilson, et als.	Answer to the bill of Christopher Y. Lansing, Jared F. Harrison, George Bliss, Clark Durant, et als., intervening in this action.

Bill filed Oct. 23, 1867.

The seperate answer of the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, John Elliott, and Blakeley Wil-
241 son, to the bill of complaint filed by the above plaintiff.

The said defendants saving & reserving to themselves all and all manner of exception to the many errors, uncertainties, & imperfections in said bills of intervention filed in this cause October 25th, 1867, for answer thereto saith: That they have no knowledge except as in said bills contained that the said plaintiffs are the creditors of the Mississippi and Missouri Railroad Company; but they admit that said railroad

company is insolvent, and that its property and franchises were sold at judicial sale on foreclosure of mortgage to pay its debts.

They do not admit that the said M. and M. Railroad Company are the debtors of said plaintiffs, as guarantors of city and county bonds, or that said plaintiffs purchased said bonds on the faith of the written guaranty of said railroad company.

They admit that said city and county bonds were given in payment for subscription to stock in said railroad company, but they deny that said cities & counties are insolvent, but aver that they are abundantly able to pay all their just liabilities, and insist that before they can
242 enforce payment from the said railroad company, that they shall be required to exhaust their remedies against said cities and counties.

They further answer that as to the ownership by said Bliss and said Vanderveer of Johnson County bonds, they have no knowledge except as contained in said bill, and require strict proof of the same.

That as to the ownership by Clark Durant, Charles W. Durant, Robert Murray, and William Elliott, of the bonds of Muscatine County, they have no knowledge except as contained in said bill, and require proof of the same.

That as to the ownership of bonds as alleged by said Volkert P. Douw, Lansing, Harrison, Jos. W. Clark, Harriet Le Conte, Nisbet, they have no knowledge and require proof.

That as to the ownership by Charles W. Durant, Clark Durant, George Bliss, of the bonds of Iowa City, they have no knowledge except as in said bill, and require proof of the same.

That as to the judgments against Muscatine County and Iowa City, and the return of the execution nulla bona, these defendants have no knowledge except as in said bills, and therefore require proof of
243 the same, and respectfully insist that, as against cities & counties in the State of Iowa, a return of nulla bona on an execution is not evidence of insolvency.

These defendants further answering admit that certain parties filed bills on the equity side of this court to subject a portion of the funds arising from the sale of the property and franchises of said railroad company to the payment of these debts, and that the plaintiffs in this suit have made co-complainants in cause No. 65.

That as to the reasons why said plaintiffs did not obtain judgments on their bonds, and as to the agreement of parties to let in the bonds of these plaintiffs on an equal footing with other parties, these defendants have no knowledge except as contained in said bill, and therefore require proof of the same.

Said defendants further answering say, that the said M. & M. Railroad Company are not the debtors to the several parties to an amount exceeding half a million of dollars, but they admit that said railroad company guaranteed a large amount of the bonds of cities and counties, but aver that their liability (if any there be) is a contingent liability, and insist that the said M. & M. Railroad Company are only liable in
244 equity, after the said plaintiffs have exhausted all their legal remedies against the makers of said bonds.

Said defendants further answering deny, that the fund called in said bill "the sixteen per cent." is a trust fund to be applied in payment of the debts of said M. & M. Railroad Company, but aver that the said fund belonged to the parties who were the holders of the bonds of said railroad company, and that said bondholders released so much of said fund amounting to sixteen per cent. to the stockholders of the said company, which said fund is in the hands of three of these defendants, to

wit, Stanton, Elliott, and Wilson, as trustees, for distribution pro rata to the holders of the stock of said company, and the said trustees are ready & willing to execute their said trust, according to its terms, whenever permitted so to do by the order of this court.

Defendants further answering say, that as to the allegation in said complainants' bill, that injunctions have been obtained by the State courts restraining and enjoining the officers of said cities and counties from paying the said bonds, saith, that true it is, that in some cases injunctions have been issued, but these defendants aver that said
245 injunctions are wholly inoperative and null and void as the Supreme Court of the United States has decided that said bonds so issued are valid, and that the several cities and counties are liable on them and have ordered and adjudged that they pay the same, and these defendants insist that the Supreme Court of the United States is paramount in its jurisdiction and authority.

And now having answered all the allegations in said bill contained, which they regard material to be answered unto, pray to be hence dismissed, with their reasonable costs in this behalf most unjustly sustained.

JNO. P. COOK,
Solicitor for Defendants named.

UNITED STATES OF AMERICA, *State of Iowa, ss:*

I, John P. Cook, upon oath say that the foregoing answer is true, as I verily believe; that I am one of the solicitors for said defendants & familliar with the matters therein stated.

Sworn & subscribed before me this 11th day of May, 1868, at Davenport, in the district of Iowa.

Witness my hand & seal the date aforesaid.

[SEAL.]

S. E. BROWN,
U. S. Com'r, District of Iowa.

Endorsed: Filed 25th Oct., 1867, by consent of parties.
W. G. WOODWARD, *Clerk.*

246 On this day, to wit, the twenty-sixth day of October, A. D. 1867, came the plaintiffs, by Grant and Smith, their solicitors, and the intervenors, by Edmonds and Ransom, their solicitors, and filed in said clerk's office their replication to the answer of the defendants, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, which replication is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER
vs.
THE CITY OF DAVENPORT, THE M. & M. R. R. Co., the Chicago, Rock Island and Pacific R. R. Co., George W. Stanton, jr., John Elliott, and Blakeley Wilson. } Replication to answer.

Replication to answer of C., R. I., & P. R. R. Co., George W. Stanton, John Elliott, and Blakeley Wilson.

The complainants, and as well the intervening petitioners,
247 Bliss, Clark Durant, C. W. Durant, William Elliott, Henry Van-

derveer, and Robert Murray, and others, make replication to the answer above named and to any other answer herein filed, and say that said complainants and petitioners affirm the allegations set forth in their original bill of complaint & petitions, and deny each allegation set forth in said answer of defendant.

GRANT AND SMITH,
EDMONDS AND RANSOM,
For said Complainants & Petitioners.

Endorsed: Filed Oct. 26th, 1867.

WOODWARD, *Clerk.*

On this day, to wit, the thirtieth day of October, 1867, in the October term of said court, in the record of the proceedings of the said entitled cause, is the following entry, to wit:

MARK HOWARD, JOHN WEBBER, & JOSEPH YOUNG
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI AND Missouri Railroad Co., the Chicago and Rock Island Railroad Company, the Chicago, Rock Island, and Pacific Railroad Company, Geo. W. Stanton, jr., Jno. Elliott, Blakely Wilson, the County of Muscatine, the City of Muscatine, the County of Scott, & the City of Iowa City. } In equity.

248 This cause came on to be heard, Grant appearing for the plaintiff, Cook and Drury for the defendants Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, and as to the other defendants no counsel appeared, they having been duly served with process at least sixty days before the return term of the court, and being called came not, a decree is rendered against them by default; and now at this term George Bliss, Clark Durant, Charles W. Durant, William Elliott, Henry Vanderveer, and Robert Murray filed a bill to be made parties, and the cause is set down for hearing upon the bill of Mark Howard, John Webber, and the amendment thereto of Joseph Young, the answer of the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, the replications to said answers, the agreement of counsel as to the fact, the exhibits & depositions, and the court, upon argument had, doth order, adjudge, and decree that the sum of $552,400 00, agreed to be divided among the stockholders of the Mississippi and Missouri Railroad Company upon the sale of said railroad and its franchises to the Chicago and Rock Island railroad, is a fund to be applied in the payment of the
249 guaranteed debt by the Mississippi & Missouri Railroad Company, due and to become due to the plaintiffs before any part thereof can be divided among the stockholders, and that said fund is to be divided among said plaintiffs Howard, Webber, & Young, and the interpleaders, Bliss Durant, Elliott, Vanderveer, and Murray, and to ascertain the amount due to each of said claimants, Ashabel Berrett, of Davenport, is reported a master to report the number, amount, judgment, principal, & interest due, & principal not due, belonging to each of said claimants; and the defendants having alleged that of the said sum of $552,400 in bonds to be divided among the stockholders of said road, they had paid out the sum of $100,699 to bondholders and for expenses connected with the execution of their trust under the sale,

the said master is ordered to ascertain and report whether the same was paid out and for what purpose, reporting each item in detail, and he is required to report on both of said subjects on or before the 1st of March next.

And as to the balance of said bonds, $451,703 93, of the Chicago, Rock Island, & Pacific Railroad Company, so agreed to be paid
250 to said stockholders, the interest on the sum of $552,400 from 1st January, 1866, to 1st July, 1866, at 6 per cent., and cupons for interest on $451,703 93 from 1st July, 1866, at 7 per cent., the said defendants are ordered, adjudged, and decreed to deliver the same to B. F. Allen, who is appointed a receiver to receive said moneys, bonds, and cupons, collect the cupons now due, & as they become due, and hold the said moneys, bonds, and cupons until the further order of this court, and before entering on the discharge of his duties the said Allen is required to give bonds to the plaintiffs and interpleaders in the penal sum of seven hundred thousand dollars, with sureties to be approved by the clerk of this court, conditioned faithfully to keep this money, bonds, and cupons, and to pay them over as this court may direct, and for the general discharge of his duties as receiver, and this cause is continued until the next term of this court.

And it is further ordered that the plaintiffs and defendants have until the 1st December, 1867, to answer the interpleader of Bliss and others.

J. M. LOVE.

251 On this day, to wit, the first day of November, A. D. 1867, came the plaintiffs, by Grant, their solicitor, and filed in said clerk's office their answer to the petition of George Bliss and others in said cause; which answer is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER }
vs.
THE CITY OF DAVENPORT & OTHERS. }

The plaintiffs in this suit, Mark Howard, John Webber, & Joseph Young, by leave of the court, make this joint and seperate answer to the petition of George Bliss and others, filed October 23, 1867.

That they know nothing of the claims of the plaintiffs against the Mississippi & Missouri Railroad Company, and require proof thereof.

That as to the judgments of the said Bliss and others against the county of Johnson, it may be true; it is also true that said county of Johnson is perfectly solvent, is the principal in the debt secured, and perfectly able to pay the same.

252 That the plaintiffs in the suit of Howard & als. vs. Davenport and als. have no judgments nor claims against Johnson County, have never made that county a party to this suit.

That said plaintiffs Howard and Webber, on the 9th of July, 1865, commenced their suit against the makers and guarantors of the bonds held by them, they both having at that time judgments and executions returned nulla bona on said executions. That in September following they permitted Joseph Young, a creditor on similar bonds to their own, to become a party to this suit. That at the same time that the said Howard and Webber commenced their suit, P. S. Benton, a judgment creditor against Iowa City, commenced a similar suit in his own behalf,

for Iowa City bonds, and Selden S. Walkly, a judgment creditor against the city of Muscatine, commenced a similar suit against the same parties on his bonds; that in the claim of Benton vs. Iowa City were certain bonds held & owned by John A. Dix, president of the Mississippi & Missouri Railroad Company, who had judgment and execution returned against Iowa. That after these suits were commenced, the plaintiff in the suit to which the said Bliss was a party, asked
253 leave of the attorneys in that suit to become a party, and it was granted him; but it is not true that the plaintiffs in the suit of Howard and Webber, Benton & Walkly, or either of them, ever consented that Bliss and associates should become a party to their suits or divide their fund. No application to become co-plaintiffs was ever made to them or their attorneys, and if it had been made it would have been refused. Neither is it true that the defendants in the Howard, Webber, and Young suits ever consented that Bliss and others should be made plaintiffs in the suits of Le Conte & Nisbett, or that all creditors should share alike in the fund which was seized by Howard and Webber, who were then the only judgment creditors of the Mississippi and Missouri Railroad Company.

That the plaintiffs Howard, Webber, & Young made their agreement with Benton & Walkly, & the defendants, in writing; that their suits were all of the same date, & all equal and prior liens to any other creditors, and they joined no one else in the suits begun by them; that Joseph Young, who was made a complainant by consent of Webber and Howard, in September, 1865, was ready to join with them in
254 July, 1865, but his name was omitted by his counsel, who were also counsel of Howard and Webber, and judgments have since July, 1865, been rendered in this court for the monies due to Young and those he represents, against the said Mississippi and Missouri Railroad Company.

That the plaintiffs Howard, Webber, & Young first applied to this court for relief; that they, by their dilligence, seized & secured the fund now under the control of this court; that they really had a decree against the defendants at the December term of this court, and the entry was to be made in vacation. That the counsel of Howard, Webber, & Young, having received valuable assistance from the counsel of Le Conte & Nisbett, & having made their allegations for relief large enough to include the claims held by him, did invite the said counsel to transfer their claims to Young, so as to include them in his decree, and this they not only had the legal right to do, so long as the fund was sufficient, but it was their moral duty so to do. That the claims of Howard, Weber, and Young will consume the whole fund which they have by their dilligence seized and recovered; that at the time they began their suit, the plaintiffs Bliss and others were not in this
255 court at all; that they denied the right of the plaintiffs' claim, and were the confederates of Stanton, Elliott, and Wilson, and the Chicago and Rock Island railroad, in endeavoring to direct this dividend from the payment of the plaintiffs' claims, and the plaintiffs Howard have always, and now insist, that having, by their superior dilligence, seized this dividend and secured jurisdiction in this court, they are entitled to be first paid the whole amount of their claims, as well those in judgment as those not in judgment.

GRANT,
For Howard, Webber, & Young.

Endorsed: Filed Nov. 1, 1867.

W. G. WOODWARD, *Clerk.*

256 The following paper, to wit, a stipulation signed by Grant, solicitor for plaintiff, and John P. Cook, one of the solicitors for defendants, appears upon the files in said entitled cause in said clerk's office, but there is no record thereon, by endorsement or otherwise, showing when or by whom the same was filed. Said paper is in the words and figures following, to wit:

U. S. C. C. for dist. Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

It is agreed in this cause that Howard, Webber, & Young, plaintiffs, may prove up their claim by affidavits, without producing bonds, and that if the plaintiffs succeed in the suit, they will claim of the defendants only such bonds, cupons, & judgments as they may actually produce and deliver up to the defendants, or assign to them, if in judgments.

GRANT, *for Pl'ffs.*
JNO. P. COOK.

257 On this day, to wit, the twenty-eighth day of February, A. D. 1868, came A. H. Bennett, the master named in the interlocutory decree in said cause, and filed in said clerk's office a report in said cause; which report is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, DISTRICT OF IOWA,
In the Circuit Court of the United States for said District, ss:

MARK HOWARD, JOHN WEBBER, AND JOSEPH YOUNG
vs.
CITY OF DAVENPORT, THE MISSISSIPPI & MISSOURI RAILROAD CO., the Chicago, Rock Island, & Pacific Railroad Co., George W. Stanton, jr., John Elliott, Blakely Wilson, the County of Muscatine, the City of Muscatine, the County of Scott, the City of Iowa City, defendants, and Clark Durant, Charles W. Durant, George Bliss, William Elliott, Robert Murray, Henry Vanderveer, & others, interpleaders.

In equity.—Master's report.

258 In pursuance of notice, & by agreement of counsel representing the parties, plaintiffs, defendants, & claimants, I met them at my office in Davenport, Scott County, Iowa, on the third day of February, 1868, at which time the hearing was postponed to the eleventh, and from that time to the 13th, of February, when it was agreed by said counsel that no bonds, cupons, or transcripts of judgments need be produced at the hearing, but that the affidavits of counsel representing claimants should be sufficient evidence of the amount and the time of the recovery of all judgments, and the number, amount, and time when due, & when not due, of all bonds & coupons presented & owned by said claimants, and of the guaranteed payments of the same by the Mississippi and Missouri Railroad Company, and that said judgments

were obtained on past due cupons attached to said guaranteed bonds; and upon this evidence I have ascertained, and hereby report, "the number, amounts, judgments, principal, & interest due, and principal not due, belonging to each of said claimants," and to other claimants, which the counsel, parties, plaintiffs, defendants, and claimants, have agreed shall be made parties to this suit by impleading, as will
259 appear from the annexed stipulations and agreements marked 1 & 2. The amounts due and not due to respective claimants will more fully and in detail appear in the annexed schedules, and which I state to be as follows, viz:

Name of claimants.		Amount of principal & interest due.	Amount of principal not due.	Total amount of principal & interest due and not due.
Clark Durant,	Schedule A	18,560 93	18,000	36,560 93
Charles W. Durant,	" B	10,128 14	14,000	24,128 14
Robert Murray,	" C	5,851 97	6,000	11,851 97
Henry Vanderveer,	" C	8,637 42	.....	8,637 42
William Elliott,	" D	5,239 70	6,000	11,239 70
George Bliss,	" E	34,166 04	4,000	38,166 04
Betsey Tracy,	" F	2,484 06	19,500	21,984 06
Harriet L. Conte,	" G	19,318 75	2,000	21,318 75
Joseph W. Clark,	" H	6,220 50	6,500	12,720 50
Volkert P. Douw & Christopher Y. Lansing,	" I	7,794 08	8,000	15,794 08
Margaret I. Nisbet,	" I	8,272 60	.....	8,272 60
Jared F. Harrison,	" J	6,522 48	8,000	14,522 48
Joseph Young,	" (14) K	336,428 90	226,000	562,428 90
Mark Howard,	" "	4,404 22	.....	4,404 22
John Webber,	" "	10,002 59	.....	10,002 59
		$484,032 38	$318,000	$802,032 38

260 I have allowed interest on all past due cupons payable in New York, & upon all judgments recovered upon cupons, at the rate of seven per cent., and upon all cupons payable in this State at six per cent., and upon the principal of the bonds after maturity of total cupons at the rate designated in said bond.

Before the expenses incurred by defendants in the execution of their trust, I report as follows, viz: It was agreed by counsel for claimants that the affidavit of Ebenezer Cook should be sufficient evidence of the amount expended by defendants in the execution of their trust.

And upon this evidence I state this amount to be as follows, viz:

Amount paid E. W. Dunham, F. Haven, and Thomas Walker	$12,000
Amount allowed Stanton, Elliott, & Wilson	21,000
Legal expenses, attorneys' fees, costs, stamps on deed, &c., &c., estimated	25,000
	$58,000

The above items are the only ones that have been furnished me, and I am therefore unable to report more in detail the items of said expenditures.

A. H. BENNETT,
Master and Referee.

Master's fees, $700.

DAVENPORT, *Feb.* 27, 1868.

261 No. 1.

Circuit court of the U. S., district of Iowa.

MARK HOWARD ET AL. *vs.* C., R. I., & P. R. R. ET AL. } Before A. H. Bennett, esq., referee.

STATE OF IOWA, *Scott County, ss:*

I, Charles T. Ransom, on oath, say that, as I am informed by J. B. Edmonds, and believe, Betsey Tracy is the owner of 18 Muscatine County bonds of one thousand dollars each, with cupons annexed, cupons $50 each, cupons of January, 1868, & July, 1867, past due, prior cupons being in judgment. The numbers of said bonds I cannot now furnish, but can do so by the May term of this court. That she is also the owner of bonds Nos. 1, 2, & 3 of Iowa City, $500 each, drawing 10 % interest, cupons of $50, due Jan. 1, 1867, & Jan. 1, 1868, annexed to said bonds and annexed to each bond. That on all said bonds interest is due in New York.

That said bonds were all guaranteed by the M. & M. R. R. Co., & are unpaid, & said cupons above specified. That on former cupons on said bonds judgment was obtained by Edmonds & Ransom,
262 as attorney in said court, and said bonds are in our control as attorney for said Betsey.

C. T. RANSOM.

Signed by T. C. Ransom & sworn to by him before me, Feb'ry 13, 1868.

A. H. BENNETT,
Master & Referee.

MARK HOWARD ET AL. *vs.* C., R. I., & P. R. R. CO. ET AL. } Before A. B. Bennett, esq.

It is stipulated that Betsey Tracy may file petition for intervention herein nunc pro tunc, on 18 bonds of $1,000 each of Muscatine County, & 3 bonds, Nos. 1, 2, & 3, of Iowa City, & that the same may be proven before referee A. H. Bennett, esquire, by affidavit of att'ys & without production of the bonds themselves or numbers.

No objection to the time of filing such petition, but same may be filed at any time before May term of said court, and said Tracy is to participate in this fund as if she were a party to the original bill of pl'ffs, & have the same standing in court, & the same share in the benefits of the decree already made herein.

Feb. 13, '68.

GRANT AND SMITH,
Pl'ffs' Att'ys.
JOHN N. ROGERS,
Sol'r for Le Conte & als., intervening Pl'ffs.

263 Protesting that none of the plaintiffs in this case are entitled to the fund sought to be subjected to plaintiffs' claim, I consent that Betsey Tracy may file her petition of intervention nunc pro tunc, reserving all legal rights that defendants may have in the case.

JNO. P. COOK,
Sol'rs for Def'ts, except the M. & M. R. R. Co.

No. 2.

Circuit court of the United States, district of Iowa.

MARK HOWARD & ALS.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD Company & als. } In equity.

It is hereby agreed in this case that Harriet Le Conte, Margaret I. Nisbet, Volkert P. Douw, Christopher Y. Lansing, Joseph W. Clark, and Jared F. Harrison may intervene in the same, and file petition accordingly, to be filed nunc pro tunc as of May 10th, 1867, claiming to join in the suit as bondholders, and join in the distribution of the fund, and
264 that the order made at the October term, 1867, of refrence, shall be so amended as to provide for ascertaining & reporting the amounts due to said parties, & put them in all respects on the same footing as the other parties plaintiff in this case.

GRANT AND SMITH,
Pl'ffs' Att'ys.
EDMONDS & RANSOM,
For Bliss et al., Intervenors.

Protesting that none of the plaintiffs in this case are entitled to the fund sought to be subjected to the plaintiffs' claim, I consent that the foregoing named plaintiffs file their petitions of intervention nunc pro tunc, reserving all legal rights that the defendants may have in the case.

JOHN P. COOK,
Sol'r for Def'ts, except M. & M. R. R. Co.

Circuit court of the United States, circuit of Iowa.—Decree at Oct. 7, 1868.

MARK HOWARD ET AL.
vs.
THE CHICAGO, ROCK ISLAND, & PACIFIC Railroad Co. et al.

On hearing before A. H. Bennett, esquire, register, it is hereby
265 stipulated that all objections to the right of George Bliss and others (who by Edmonds & Ransom, their attorneys, have filed a petition for intervention herein) to intervene herein and participate in the fund in the hands of some of defendants or the receiver appointed by the court, is waived and withdrawn.

No appeal is to be taken from that part of the decree herein made, allowing such intervention or participating by the intervenors.

The answer filed by Howard et al. to the petition of the intervenors is withdrawn.

EDMONDS AND RANSOM,
For Bliss el al., Intervenors.
GRANT AND SMITH,
Pl'ffs' Att'ys.
JNO. N. ROGERS,
Sol'r for Le Conte & als., Intervening Pl'ffs.

266 *Muscatine County bonds.—Schedule A.*

Name of claimant.	No. of bond.	Amount of bond not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity 1st & last cupons.	Amount of the interest on cupons to March 1st, 1868.	Interest on principal of bond after date of last cupon.	Total amount of bonds, cupons, & interest up to March 1, 1868.
Clark Durant	61	1,000	3	150	Jan'y 1, '67.	6 99	16 67	1,173 66
	2	1,000	3	150	Jan'y 1, '68.	6 99	16 67	1,173 66
	62	1,000	3	150		6 99	16 67	1,173 66
	63	1,000	3	150		6 99	16 67	1,173 66
	64	1,000	3	150		6 99	16 67	1,173 66
	65	1,000	3	150		6 99	16 67	1,173 66
	98	1,000	3	150		6 99	16 67	1,173 66
	99	1,000	3	150		6 99	16 67	1,173 66
	100	1,000	3	150		6 99	16 67	1,173 66
	30	1,000	2	200		8 00	16 67	1,224 67
	51	1,000	2	200		8 00	16 67	1,224 67
	53	1,000	2	200		8 00	16 67	1,224 67
	55	1,000	2	200		8 00	16 67	1,224 67
	59	1,000	2	200		8 00	16 67	1,224 67
		$14,000	37	$2,350		$102 91	233 38	16,686 29
IOWA CITY BONDS.								
Clark Durant	14	500	1	50	Jan'y 1, '68.	58	8 34	558 92
	15	500	1	50	" "	58	8 34	558 92
	16	500	1	50	" "	58	8 34	558 92
	17	500	1	50	" "	58	8 34	558 92
	18	500	1	50	" "	58	8 34	558 92
	19	500	1	50	" "	58	8 24	558 92
	20	500	1	50	" "	58	8 34	558 92
	21	500	1	50	" "	58	8 34	558 92
		4,000	8	400		4 64	66 72	$21,157 65

267 Amount of Clark Durant jugments and interest 15,403 28

Amount of Clark Durant's claim $36,560 93

Clark Durant's judgments.

Clark Durant vs. Muscatine County:		
Judgment for plaintiff 11th May, 1865		$6,770 85
Costs of suit		55 25
		$6,826 10
Interest at 7 0|0 to March 1, 1868		1,329 81
		$8,155 91
Clark Durant vs. Muscatine County:		
Judgment for plaintiff 16th May, 1867	$3,681 40	
Costs of suit	36 30	
Interest at 7 0|0 to March 1, 1868	206 02	
		3,923 72
Clark Durant vs. Same City:		
Judgment for plaintiff 18th May, 1867	$3,116 00	
Costs of suit	34 30	
Interest at seven per cent. to March 1, 1868	173 35	
		3,323 65
Amount of Clark Durant's judgments		$15,403 28

268 *Muscatine County bonds.—Schedule B.*

Name of claimant.	No. of bond.	Amount of bond not due.	No. of coupons due March 1, 1868.	Amount of coupons past due.	Dates of maturity first & last coupons.	Amount of interest on coupons to March 1st, 1868.	Interest on principal of bond after date of last cupon.	Total amount of bonds, cupons, & interest up to March 1, 1868.
C. W. Durant	45	1,000	3	1,50	January 1st, '67.	6 99	16 67	1,173 66
"	44	1,000	3	1,50	January 1, '68.	6 99	16 67	1,173 66
"	43	1,000	3	1,50	" "	6 99	16 67	1,173 66
"	42	1,000	3	1,50	" "	6 99	16 67	1,173 66
"	41	1,000	3	1,50	" "	6 99	16 67	1,173 66
"	40	1,000	3	1,50	" "	6 99	16 67	1,173 66
"	88	1,000	3	1,50	" "	6 99	16 67	1,173 66
		7,000	21	10 50		48 93	116 67	8,215 62
IOWA CITY BONDS.								
C. W. Durant	27	500	1	50	January 1, 1868.	58	8 34	558 92
"	28	500	1	50	" "	58	8 34	558 92
"	29	500	1	50	" "	58	8 34	558 92
"	30	500	1	50	" "	58	8 34	558 92
"	31	500	1	50	" "	58	8 34	558 92
"	32	500	1	50	" "	58	8 34	558 92
"	33	500	1	50	" "	58	8 34	558 92
"	34	500	1	50	" "	58	8 34	558 92
"	35	500	1	50	" "	58	8 34	558 92
"	36	500	1	50	" "	58	8 34	558 92
"	37	500	1	50	" "	58	8 34	558 92
"	38	500	1	50	" "	58	8 34	558 92
"	39	500	1	50	" "	58	8 34	558 92
"	49	500	1	50	" "	58	8 34	558 92
		14,000	35	17 50		57 05	233 45	16,040 50

269 Amount of Charles W. Durant's judgments & interest 8,087 64

Amount of Charles W. Durant's claims $24,128 14

Charles W. Durant's judgments.

Charles W. Durant vs. Muscatine County :

Judgment for plaintiff 16th day of May, A. D. 1867	$5,272 33
Costs of suit	40 80
Interest at 7 per cent. to March 1st, 1868	294 45

Charles W. Durant vs. Iowa City :

Judgment for plaintiff 18th day of May, A. D. 1867	$2,305 00
Costs of suit	45 70
Interest at 7 per cent. to March 1st, 1868	129 36
	$8,087 64

270 *Muscatine County bonds.—Schedule C.*

Name of claimant.	No. of bonds.	Amount of bonds due.	Amount of bonds not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity of first and last cupons.	Amount of interest on cupons to March 1st, 1868.	Interest on principal of bonds after date of last cupon.	Total amount of bonds, cupons, & interest up to March 1st, 1868.
Robert Murray	28		1,000	3	150	January 1, '67.	6 99	16 67	1,173 66
	29		1,000	3	150	January 1, '68.	6 99	16 67	1,173 66
	30		1,000	3	150		6 99	16 67	1,173 66
	31		1,000	3	150		6 99	16 67	1,173 66
	32		1,000	3	150		6 99	16 67	1,173 66
	33		1,000	3	150		6 99	16 67	1,173 66
			6,000	18	900		41 94	100 02	7,041 96

Judgment.—Robert Murray vs. Muscatine County :

Judgment for plaintiff 16th day of May, A. D. 1867	$4,519 14
Costs of suit	38 30
Interest at 7 per cent. to March 1st, 1868	252 57
Amount of Robert Murray's claim	$11,851 97

Johnson County bonds.

Henry Vanderveer....	46	1,000	.....	2	70	Jan'y 1, '67.	$2 85	$11 67	1,084 52
	47	1,000	.....	2	70	Jan'y 1, '68.	2 85	11 67	1,084 52
				4	140		5 70	23 34	2,169 04

Judgment.—Henry Vanderveer vs. Johnson County :	
Judgment for plaintiff May 16, 1867	6,094 15
Costs of suit	34 60
Interest to March 1st, 1868, at 7 per cent	339 63
Amount of Henry Vanderveer's claim	$8,637 42

271 *Muscatine County bonds.—Schedule D.*

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity of 1st & last cupons.	Amount of interest on cupons to March 1st, 1868, 6 per cent.	Interest on principal of bond after date of last cupon.	Total amount of bonds, cupons, & interest up to March 1st, 1868.
William Elliott.....	27	1,000	1	100	Janr'y 1, '67.	7 00	16 67	1,123 67
	28	1,000	1	100	"	7 00	16 67	1,123 67
	29	1,000	1	100	"	7 00	16 67	1,123 67
	60	1,000	1	100	"	7 00	16 67	1,123 67
	24	1,000	1	100	"	7 00	16 67	1,123 67
	25	1,000	1	100	"	7 00	16 67	1,123 67
		6,000	6	600		42 00	100 02	6,742 02

Judgments.—Wm. Elliott vs. Muscatine County :	
Judgment for plaintiff 12th day of May, A. D. 1865	$1,768 64
Costs of suit	37 00
Interest at 7 per cent	552 29
" William Elliott vs. Muscatine County :	
Judgment for pl'ff 18th day of October A. D. 1867	862 64
Interest at 7 per cent	11 96
" John Newcomer, for William Elliott vs. Muscatine County :	
Judgment for plaintiff 18th day of October, A. D. 1867	1,437 96
Interest at 7 per cent	37 19
Amount of Wm. Elliott's claim	$11,239 70

272 *Iowa City bonds.—Schedule E.*

Name of claimant.	No. of bonds.	Amount of bonds not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity of 1st & last cupons.	Amount of interest on cupons to March 1st, 1868.	Interest on principal of bond after date of last cupon.	Total amount of bonds, cupons, & interest, up to March 1st, 1868.
George Bliss.....	73	500	1	50	Janua'y 1, 1868.	58	8 33	588 91
" "	74	500	1	50	"	58	8 33	588 91
" "	75	500	1	50	"	58	8 33	588 91
" "	76	500	1	50	"	58	8 33	588 91
" "	77	500	1	50	"	58	8 33	588 91
" "	78	500	1	50	"	58	8 33	588 91
" "	79	500	1	50	"	58	8 33	588 91
" "	80	500	1	50	"	58	8 33	588 91
		4,000	8	400		4 64	66 64	4,471 28

Judgments.—George Bliss vs. Johnson County :	
Judgment for plaintiff 12th day of May, A. D. 1866	25,427 00
Costs of suit	40 00
Interest at 7 per cent	3,213 89
" George Bliss vs. Iowa City :	
Judgment for plaintiff, 16th day of May, A. D. 1867	4,708 00
Costs of suit	40 05
Interest at 7 per cent	265 82
Amount of George Bliss' claim	$38 166, 04

273 *Muscatine County bonds.—Schedule F.*

Name of claimant.	No. of bonds.	Amount of bonds not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity of first & last cupons	Amount of interest on cupons to March 1st, 1868, at 6 per cent.	Interest on principal of bond after date of last cupon.	Total amount of bonds, cupons & interest, up to March 1st, 1868.
Betsey Tracy...	Not known.	1,000	2	100	Jan'y 1, '67-Jan'y 1, 1868.	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
" " ...	"	1,000	2	100	" "	2 50	16 67	1,119 17
		18,000	36	1,800		45 00	300 06	20,145 06
IOWA CITY BONDS.						7 per c't.		
Betsey Tracy...	1	500	2	100	Jan'y 1, '67—Jan'y 1, '68.	4 67	8 33	613 00
" " ...	28	500	2	100	" "	4 67	8 33	613 00
" " ...	3	500	2	100	" "	4 67	8 33	613 00
		1,500	6	300		14 01	24 99	
Amount of Betsey Tracy's claim								$21,984 06

274 *Recapitulation of claims represented by Edmonds and Ransom, solicitors.*

Clark Durant—Schedule A :	
Bonds not due	$18,000 00
Amount of interest due	3,157 65
Judgments, principal & interest due	15,403 28
	$36,560 93
Chas. W. Durant—Schedule B :	
Bonds not due	$14,000 00
Amount of interest due	2,040 50
Judgments, principal & interest due	8,087 64
	24,128 14
Robert Murray—Schedule C :	
Bonds not due	$6,000 00
Amount of interest due	1,041 96
Judgments, principal & interest due	4,810 01
	$11,851 97
Henry Vanderveer—Schedule C :	
Bonds & interest due	2,169 04
Judgment & interest due	6,468 38
	$8,637 42
Wm. Elliott—Schedule D :	
Bonds not due	6,000 00
Interest due	742 02
Judgments & interest due	4,497 68
	11,239 70
George Bliss—Schedule E :	
Bonds not due	4,000 00
Interest due	471,28
Judgments & interest due	33,694 76
	38,166 04
275 Betsey Tracy—Schedule F :	
Amount of bonds not due	$19,500 00
Interest due	2,484 06
	$21,984 06

Full amount of principal & interest due	$85,068 26
" " " " not due	67,500 00
	$152,568 26

276 *Davenport City bonds.—Schedule G.*

Name of claimant.	No. of bonds.	Amount of bonds due.	Amount of bonds not due.	No. of cupons past due.	Amount of cupons past due.	Date of maturity of first & last cupon.	Interest on cupons to March 1st, 1868, at 7 per cent.	Interest on principal of bond from date of last cupon March 1, 1868.	Total amount of bonds, cupons & interest to March 1st, 1868.
Harriet Le Conte.	41	500	.....	9	225	Aug. 1, 61–Aug. 1, 65.	72 16	129 12	926 28
"	42	500	.....	9	225	" "	72 16	129 12	926 28
"	43	500	.....	9	225	" "	72 16	129 12	926 28
"	44	500	.....	9	225	" "	72 16	129 12	926 28
"	45	500	.....	9	225	" "	72 16	129 12	926 28
"	46	500	.....	9	225	" "	72 16	129 12	926 28
"	47	500	.....	9	225	" "	72 16	129 12	926 28
"	48	500	.....	9	225	" "	72 16	129 12	926 28
"	49	500	.....	9	225	" "	72 16	129 12	926 28
"	50	500	.....	9	225	" "	72 16	129 12	926 28
"	80	500	.....	9	225	" "	72 16	129 12	926 28
"	81	500	.....	9	225	" "	72 16	129 12	926 28
"	104	500	.....	9	225	" "	72 16	129 12	926 28
"	106	500	.....	10	250	" "	84 56	129 12	963 68
"	57	1000	.....	9	450	" "	144 32	258 31	1,852 63
		8,000		136	3,625		1,166 96	2,065 99	
		Judgment against city of Davenport, May 9, 1866, for							1,970 00
		Interest from May 9, 1866, at 7 per cent.							248 22
"		MUSCATINE CITY BONDS.							
	1	.....	1,000	8	400	July 4, '64–January	53 64	16 67	1,470 31
"	2	.....	1,000	8	400	1, '68.	53 64	16 67	1,470 31
"		.....							
		.....	2,000	16	800		107 28	33 34	
"		Judgment vs. City of Muscatine, May 12, 1864							1,028 25
		Interest, from May 12th, 1864, to March 1st, 1868, a 7 per cent.							273 71
		Amount of Harriet Le Conte's claim							$21,318 75

277 *Scott County bonds.—Schedule H.—Due Oct. 1st, 1868.*

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of cupons past due.	Amount of cupons past due.	Date of maturity of first & last cupon.	Interest on cupons to March 1st, 1868, at 7 per cent.	Interest on principal from date of last cupon.	Total of bonds, cupons, and interest up to March 1, 1868.
Joseph W. Clark	9	500 00	3	75 00	Oct. 1, '66–Oct. 1, 67.	4 79	20 83	600 62
" "	29	500 00	5	125	" 1, '65. " "	12 36	20 83	658 19
" "	30	500 00	5	125	" "	12 36	20 83	658 19
" "	33	500 00	5	125	" "	12 36	20 83	658 19
" "	34	500 00	5	125	" "	12 36	20 83	658 19
" "	39	500 00	5	125	" "	12 36	20 83	658 19
" "	42	500 00	4	100	Apr. 1, '66. "	8 14	20 83	628 97
" "	43	500 00	4	100	" " "	8 14	20 83	628 97
" "	44	500 00	6	150	" '65. "	17 46	20 83	688 29
" "	45	500 00	4	100	" '66. "	8 14	20 83	628 97
" "	46	500 00	6	150	" '65. "	17 46	20 83	688 29
" "	47	500 00	4	100	" '66. "	8 14	20 83	628 97
" "	48	500 00	10	250	" '63. "	46 60	20 83	817 43
		6,500 00	66	1,650		180 67	270 69	

					JUDGMENTS.				
"	"	....	Joseph W. Clark vs. County of Scott:						
		....	Judgment for plaintiff, Oct. 19, 1865						2,294 00
			Interest from 19th Oct., 1865, at 7 per cent.						378 38
					JOHNSON COUNTY BOND.				
				Am't of bond due.					
"	"	....	12	1,000	3	105	Sept. 1, '62 – Sept. 1, '63.	36,76	315 00
									1,456 76
			Amount due Joseph W. Clark						$12,720 50

278 *Muscatine County bonds.—Schedule I.—Due January 1st, 1874.*

Name of claimant.	No of bond.	Amount of bonds due.	Amount of bonds not due.	No of cupons past due.	Amount of cupons past due.	Dates of maturity of first & last cupons.	Interest on cupons to March 1st, 1868, at seven per cent.	Interest on principal from date of last cupon.	Total of bonds, cupons, judgments, and interest up to March 1st, 1868.
Volkert P. Douw and Christopher Y. Lansing	20	.....	1,000	3	150	Jan'y1,'67.Jan'y1,'68	6 99	16 67	1,173 66
" "	21	.....	1,000	3	150	" "	6 99	16 67	1,173 66
	22	.....	1,000	3	150	" "	6 99	16 67	1,173 66
	26	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	48	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	49	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	50	.....	1,000	3	150	" "	6 99	16 67	1,173 66
" "	84	.....	1,000	3	150	" "	6 99	16 67	1,173 66
		.....	8,000	24	1,200		55 92		
" "	Judgment vs. Muscatine County, Oct. 24, 1864								2,032 00
	Interest from Oct. 24, 1864, to March 1, 1868, *a* 7 per cent.								476 90
" "	Judgment vs. Muscatine County, May 10, 1865								1,573 50
	Interest from date of judgment to March 1st, 1868, 7 per cent.								309 32
" "	Judgment vs. Muscatine Co., May 16, 1867								1,907 35
	Interest from date of judgment to March 1, 1868								105 71
	Amount of V. P. Douw & C. Y. Lansing's claim								$15,794 08
					DAVENPORT CITY BONDS.				
Margaret I. Nisbet.	29	500		6	150	Aug.1,'61. Aug.1,'62 Aug.1,'64. " '65	48 11	129 13	827 24
" "	30	500		6	150	Aug.1,'61. " '62 " '64. " '65	48 11	129 13	827 24
" "	17	1,000		6	300	Aug.1,'61. " '62 " '64. " '65	96 22	258 31	1,654 53
" "	18	1,000		6	300	" '61. " '62 " '64. " '65	96 22	258 31	1,654 53
" "	19	1,000		6	300	Aug.1,'61. " '62 " '64. " '65	96 22	258 31	1,654 53
" "	20	1,000		6	300	Aug.1,'61. " '62 " '64. " '65	96 22	258 31	1,654 53
		5,000		36	1,500		481 10	1,291 50	
	Amount of Margaret I. Nisbet's claim								$8,272 60

279 *Muscatine County bonds.—Schedule J.—Due January 1, 1874.*

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of cupons due.	Amount of cupons due.	Date of maturity of first & last cupon.	Interest on cupons to March 1st, 1868, at 7 per cent.	Interest on principal from maturity of last cupon.	Total of bonds, cupons, & interest up to March 1st, 1868.
Jared F. Harrison	86	1,000	15	750	Jan. 1,'61. Jan. 1,'68	192 45	16 67	1,859 12
"	89	1,000	14	700	July 1,'61. "	167 37	16 67	1,884 04
"	90	1,000	14	700	" " " "	167 37	16 67	1,884 04
"	91	1,000	15	750	Jan'y 1,'61. "	192 45	16 67	1,959 12
"	92	1,000	15	700	July 1,'61. "	167 37	16 67	1,884 04
"	93	1,000	15	700	" "	167 37	16 67	1,884 04
"	96	1,000	15	700	" "	167 37	16 67	1,884 04
"	97	1,000	15	700	" "	167 37	16 67	1,884 04
		8,000	114	5,700		1,389 12	133 36	
		Amount of Jared F. Harrison's claim						$14,522 48

Recapitulation of claims represented by John N. Rogers, solicitor.

Harriet Le Conte's Schedule G	$21,318 75
Joseph W. Clark, Schedule H	12,720 50
V. P. Douw & C. Y. Lansing, Schedule I	15,794 08
Margaret I. Nisbet, " I	8,272 60
Jared F. Harrison, " T	14,522 48
	$72,628 41

280 *Recapitulation of claims represented by John N. Rogers, solicitor, showing the amount of principal and interest due, & principal not due.*

Harriet Le Conte, Schedule G:

Principal & interest due	$19,318 75
Principal not due	2,000 00
	$21,318 75

Joseph W. Clark, Schedule H:

Principal & interest due	6,220 50
" not due	6,500 00
	$12,720 50

Volkert P. Douw & Christopher Y. Lansing, Schedule I:

Principal & interest due	7,794 08
" not due	8,000 00
	$15,794 08

Marget J. Nisbet Schedule I:

Principal & interest due	8,272 60

Jared F. Harrison, Schedule I:

Principal & int. due	6,522 48
" not due	8,000 00
	14,522 48

Full amount of principal & interest due	$48,128 41
" " " " not due	24,500 00
	$72,628 00

281 *Scott County Bonds.—Schedule K.*

Name of claimant.	No. of bond.	Amount of bonds not due.	No. of coupons due March 1, 1868.	Amount of coupons past due.	Dates of maturity of coupons.	Interest on coupons to March 1, 1868. a 7 0|0	Interest on principal of bond from date of last coupon to March 1, 1868.	Total amount of bonds, coupons & interest to March 1, 1868.
Joseph Young.....	16	500	9	225	Oct. 1, '62. Oct. 1, '65. Apr. 1, '67. Oct. 1, 67.	49 58	20 83	795 41
	18	500	9	225	" "	49 58	20 83	795 41
	20	500	9	225	" "	49 58	20 83	795 41
	21	500	9	225	" "	49 58	20 83	795 41
	22	500	9	225	" "	49 58	20 83	795 41
	24	500	9	225	" "	49 58	20 83	795 41
	25	500	9	225	" "	49 58	20 83	795 41
	26	500	9	225	" "	49 58	20 83	795 41
	27	500	9	225	" "	49 58	20 83	795 41
	69	500	9	225	" "	49 58	20 83	795 41
	50	500	9	225	" "	49 58	20 83	795 41
	11	500	2	50	Apr. 1, '67. Oct. 1, '67.	2 31	20 83	573 14
	12	500	2	50	" "	2 31	20 83	573 14
	10	500	1	25	" "	73	20 83	546 56
	13	500	1	25	" "	73	20 83	546 56
	17	500	1	25	" "	73	20 83	546 56
	19	500	1	25	" "	73	20 83	546 56
	31	500	1	25	" "	73	20 83	546 56
	38	500	1	25	" "	73	20 83	546 56
	4	500	1	25	" "	73	20 83	546 56
	15	500	1	25	" "	73	20 83	546 56
	8	1,000	9	450	Oct. 1, '62. Oct. 1, '65. Apr. 1, '67. Oct. 1, '67.	96 16	41 66	1,590 82
	13	1,000	1	50	Oct. 1, '67.	1 46	41 66	1,093 12
	4	1,000	2	100	Apr. 1, '67. Oct. 1, '67.	4 62	41 66	1,146 28
282	6	1,000	2	100	Apr. 1, '67. Oct. 1, '67.	4 62	41 66	1,146 28
	9	1,000	2	100	" "	4 62	41 66	1,146 28
	16	1,000	2	100	" "	4 62	41 66	1,146 28
	17	1,000	2	100	" "	4 62	41 66	1,146 28
	18	1,000	2	100	" "	4 62	41 66	1,146 28
	19	1,000	2	100	" "	4 62	41 66	1,146 28
	20	1,000	2	100	" "	4 62	41 66	1,146 28
	25	1,000	1	50	Oct. 1, '67.	1 46	41 67	1,093 13
	11	1,000	2	100	Apr. 1, '67. "	4 67	41 67	1,146 34
	5	1,000	1	50	"	1 46	41 67	1,093 13
	10	1,000	1	50	"	1 46	41 67	1,093 13
	12	1,000	1	50	"	1 46	41 67	1,093 13
	21	1,000	1	50	"	1 46	41 67	1,093 13
	22	1,000	1	50	"	1 46	41 67	1,093 13
	23	1,000	1	50	"	1 46	41 67	1,093 13
	14	1,000	2	100	Apr. 1, '67. "	4 67	41 67	1,146 34
	24	1,000	2	100	" "	4 67	41 67	1,146 34
Judgment against Scott County, May 18, 1867							$11,556 12	
Interest from May 18, 1867, a 7 0|0							635 91	
								12,192 03

IOWA CITY BONDS.

	83	500	4	200	Jan. 1, '65. Jan. 1, '68.	23 32	8 33	731 65
	84	500	4	200	" "	23 32	8 33	731 65
	85	500	4	200	" "	23 32	8 33	731 65
	86	500	4	200	" "	23 32	8 33	731 65
283 Jos. Young.....	87	500	4	200	Jan. 1, '65. Jan. 1, '68.	32 32	8 33	731 65
	88	500	4	200	" "	32 32	8 33	731 65
	89	500	4	200	" "	32 32	8 33	731 65
	90	500	4	200	" "	32 32	8 33	731 65
	91	500	4	200	" "	32 32	8 33	731 65
	92	500	4	200	" "	32 32	8 33	731 65
	61	500	2	100	Jan. 1, '67. Jan. 1, '68.	4 66	8 33	612 99
	62	500	2	100	" "	4 66	8 33	612 99
	80	500	1	50	" "	58	8 33	558 91
	73	500	11	550	Jan. 1, '58. "	198 88	8 33	1,257 21
	74	500	1	50	"	58	8 33	558 91
	75	500	1	50	"	58	8 33	558 91
	76	500	1	50	"	58	8 33	558 91
	77	500	1	50	"	58	8 33	558 91
	78	500	1	50	"	58	8 33	558 91
	79	500	1	50	"	58	8 33	558 91
	65	500	2	100	Jan. 1, '67. "	4 66	8 33	612 99
	64	500	2	100	" "	4 66	8 33	612 99

		42	500	1	50	" "	58	8 33	558 91
		43	500	1	50	" "	58	8 33	558 91
		46	500	9	450	Jan. 1, '60. Jan. 1, '68.	131 20	8 33	1,089 53
		47	500	9	450	" "	131 20	8 33	1,089 53
		48	500	9	450	" "	131 20	8 32	1,089 53
		49	500	9	450	" "	131 20	8 33	1,089 53
		50	500	9	450	" "	131 20	8 33	1,089 53
		51	500	9	450	" "	131 20	8 33	1,089 53
		52	500	9	450	" "	131 20	8 33	1,088 53
		53	500	9	450	" "	131 20	8 33	1,089 53
284	Jos. Young	54	500	9	450	Jan. 1, '60. Jan. 1, '68.	131 20	8 33	1,089 53
		55	500	9	450	" "	131 20	8 33	1,089 53
		56	500	9	450	" "	131 20	8 33	1,089 53
		57	500	9	450	" "	131 20	8 33	1,089 53
		58	500	9	450	" "	131 20	8 33	1,089 53
		59	500	9	450	" "	131 20	8 33	1,089 53
		60	500	9	450	" "	131 20	8 33	1,089 53
		2	500	6	300	Jan. 1, '62. Jan. 1, '66. Jan. 1, '68.	73 48	8 33	881 81
		3	500	6	300	Jan. 1, '62. Jan. 1, '66. Jan. 1, '68.	73 48	8 33	881 81
		4	500	6	300	Jan. 1, '62. Jan. 1, '66. Jan. 1. '68.	73 48	8 33	888 81
		5	500	6	300	Jan. 1, '62. Jan. 1, '66. Jan. 1. '68.	8 16	8 33	881 81
		6	500	2	100	Jan. 1, '66. Jan. 1, '68.	8 16	8 33	616 49
		7	500	2	100	" "	8 16	8 33	616 49
		8	500	2	100	" "	8 16	8 33	616 49
		9	500	2	100	" "	8 16	8 33	616 49
		10	500	2	100	" "	8 16	8 33	616 49
		11	500	2	100	" "	8 16	8 33	616 49
		12	500	2	100	" "	8 16	8 33	616 49
		13	500	2	100	" "	8 16	8 33	616 49
		22	500	3	150	Jan. 1, '62. Jan. 1, '66. Jan. 1, '68.	29 74	8 33	688 07
		23	500	3	150	" " "	29 74	8 33	688 07
		24	500	3	150	" " "	29 74	8 33	688 07
		25	500	3	150	" " "	29 74	8 33	688 07
		26	500	2	100	" " "	8 16	8 33	616 49
		94	500	11	550	Jan. 1, '58. Jan. 1, '68.	198 88	8 33	1,257 21
		95	500	11	550	" "	198 88	8 33	1,257 21
		72	500	11	550	" "	198 88	8 33	1,257 21
		63	500	11	550	" "	198 88	8 33	1,257 21
285	Jos. Young	71	500	11	550	Jan. 1, '58. Jan. 1, '68.	198 88	8 33	1,257 21
		68	500	11	550	" "	188 88	8 33	1,257 21
		66	500	11	550	" "	198 88	8 33	1,257 21
		67	500	11	550	" "	198 88	8 33	1,257 21
		70	500	11	550	" "	198 88	8 33	1,257 21
		69	500	11	550	" "	198 88	8 33	1,257 21
		96	500	11	550	" "	198 88	8 33	1,257 21
		98	500	11	550	" "	198 88	8 33	1,257 21
		97	500	11	550	" "	198 88	8 33	1,257 21

Judgment against Iowa City, May 15, 1865	3,470 67
Interest from May 15, 1865, at 7 0 0	678 90
Judgment against Iowa City, May 15, 1867	6,794 19
Interest from May 15, 1867, at 7 0 0	377 83

MUSCATINE CITY BONDS.

	Jos. Young	72	500	2	50	July 1, '67—Jan. 1, '68	1 46	8 33	559 79
		77	500	2	50	" "	1 46	8 33	559 79
		86	500	2	50	" "	1 46	8 33	559 79
		87	500	2	50	" "	1 46	8 33	559 79
		88	500	2	50	" "	1 46	8 33	559 79
		100	500	2	50	" "	1 46	8 33	559 79
		84	500	2	50	" "	1 46	8 33	559 79
		68	500	2	50	" "	1 46	8 33	559 79
		67	500	2	50	" "	1 46	8 33	559 79
		66	500	2	50	" "	1 46	8 33	559 79
		82	500	2	50	" "	1 46	8 33	559 79
286	Joseph Young	85	500	2	50	July 1, '67—Jan. 1, '68	1 46	8 33	559 79
		71	500	2	50	" "	1 46	8 33	559 79
		20	500	2	50	" "	1 46	8 33	559 79
		19	500	2	50	" "	1 46	8 33	559 79
		83	500	2	50	" "	1 46	8 33	559 79
		12	500	2	50	" "	1 46	8 33	559 79
		9	500	2	50	" "	1 46	8 33	559 79
		10	500	2	50	" "	1 46	8 33	559 79
		64	500	2	50	" "	1 46	8 33	559 79
		65	500	2	50	" "	1 46	8 33	559 79
		97	500	2	50	" "	1 46	8 33	559 79
		98	500	2	50	" "	1 46	8 33	559 79
		11	500	2	50	" "	1 46	8 33	559 79

		92	500	2	50	"	"	1 46	8 33	559 79
		93	500	2	50	"	"	1 46	8 33	559 79
		94	500	2	50	"	"	1 46	8 33	559 79
		39	500	2	50	"	"	1 46	8 33	559 79
		79	500	2	50	"	"	1 46	8 33	559 79
		80	500	2	50	"	"	1 46	8 33	559 79
		81	500	2	50	"	"	1 46	8 33	559 79
		70	500	2	50	"	"	1 46	8 33	559 79
		17	500	2	50	"	"	1 46	8 33	559 79
		21	500	2	50	"	"	1 46	8 33	559 79
		22	500	2	50	"	"	1 46	8 33	569 79
		25	500	2	50	"	"	1 46	8 33	559 79
		26	500	2	50	"	"	1 46	8 33	559 79
		43	500	2	50	"	"	1 46	8 33	559 79
		44	500	2	50	"	"	1 46	8 33	559 79
287	Jos. Young	1	500	2	50	July 1, '67—Jan. 1, 1868		1 46	8 33	559 79
		15	500	2	50	"	"	1 46	8 33	559 79
		16	500	2	50	"	"	1 46	8 33	559 79
		28	500	2	50	"	"	1 46	8 33	559 79
		13	500	2	50	"	"	1 46	8 33	559 79
		14	500	2	50	"	"	1 46	8 33	559 79
		23	500	2	50	"	"	1 46	8 33	559 79
		24	500	2	50	"	"	1 46	8 33	559 79
		47	500	2	50	"	"	1 46	8 33	559 79
		48	500	2	50	"	"	1 46	8 33	559 79
		49	500	2	50	"	"	1 46	8 33	559 79
		50	500	2	50	"	"	1 46	8 33	559 79
		56	500	2	50	"	"	1 46	8 33	559 79
		57	500	2	50	"	"	1 46	8 33	559 79
		58	500	2	50	"	"	1 46	8 33	559 79
		59	500	2	50	"	"	1 46	8 33	559 79
		33	500	2	50	"	"	1 46	8 33	559 79
		34	500	2	50	"	"	1 46	8 33	559 79
		2	500	2	50	"	"	1 46	8 33	559 79
		3	500	2	50	"	"	1 46	8 33	559 79
		4	500	2	50	"	"	1 46	8 33	559 79
		5	500	2	50	"	"	1 46	8 33	559 79
		6	500	2	50	"	"	1 46	8 33	559 79
		31	500	2	50	"	"	1 46	8 33	559 79
		32	500	2	50	"	"	1 46	8 33	559 79
		35	500	2	50	"	"	1 46	8 33	559 79
		36	500	2	50	"	"	1 46	8 33	559 79
		37	500	2	50	"	"	1 46	8 33	559 79
288	Joseph Young	38	500	2	50	July 1, '67—Jan. 1, '68		1 46	8 33	559 79
		41	500	2	50	"	"	1 46	8 33	559 79
		42	500	2	50	"	"	1 46	8 33	559 79
		45	500	2	50	"	"	1 46	8 33	559 79
		46	500	2	50	"	"	1 46	8 33	559 79
		51	500	2	50	"	"	1 46	8 33	559 79
		52	500	2	50	"	"	1 46	8 33	559 79
		53	500	2	50	"	"	1 46	8 33	559 79
		54	500	2	50	"	"	1 46	8 33	559 79
		55	500	2	50	"	"	1 46	8 33	559 79
		27	500	2	50	"	"	1 46	8 33	559 79
		18	500	2	50	"	"	1 46	8 33	559 79
		40	500	2	50	"	"	1 46	8 33	559 79
		29	500	1	25	Jan. 1, '68		29	8 33	553 62
		30	500	1	25	"	"	29	8 33	553 62
		99	500	19	475	Jan. 1, '59	"	155 18	8 33	1,138 51
		73	500	2	50	July 1, 67	"	1 46	8 33	559 79
		89	500	2	50	"	"	1 46	8 33	559 79
		90	500	2	50	"	"	1 46	8 33	559 79
		3	1,000	2	100	"	"	2 91	16 67	1,119 58
		48	1,000	2	100	"	"	2 91	16 67	1,119 58
		49	1,000	2	100	"	"	2 91	16 67	1,119 58
		75	1,000	2	100	"	"	2 91	16 67	1,119 58
		76	1,000	2	100	"	"	2 91	16 67	1,119 58
		77	1,000	2	100	"	"	2 91	16 67	1,119 58
		79	1,000	2	100	"	"	2 91	16 67	1,119 58
		80	1,000	2	100	"	"	2 91	16 67	1,119 58
		52	1,000	2	100	"	"	2 91	16 67	1,119 58
289	Jos. Young	53	1,000	2	100	July 1, '67—Jan. 1, '68		2 91	16 67	1,119 58
		51	1,000	2	100	"	"	2 91	16 67	1,119 58
		19	1,000	2	100	"	"	2 91	16 67	1,119 58
		20	1,000	2	100	"	"	2 91	16 67	1,119 58
		23	1,000	2	100	"	"	2 91	16 67	1,119 58
		22	1,000	2	100	"	"	2 91	16 67	1,119 58
		27	1,000	2	100	"	"	2 91	16 67	1,119 58
		26	1,000	2	100	"	"	2 91	16 67	1,119 58
		9	1,000	2	100	"	"	2 91	16 67	1,119 58
		28	1,000	2	100	"	"	2 91	16 67	1,119 58
		17	1,000	2	100	"	"	2 91	16 67	1,119 58
		74	1,000	2	100	"	"	2 91	16 67	1,119 58
		24	1,000	2	100	"	"	2 91	16 67	1,119 58
		7	1,000	2	100	"	"	2 91	16 67	1,119 58
		6	1,000	2	100	"	"	2 91	16 67	1,119 58
		18	1,000	2	100	"	"	2 91	16 67	1,119 58
		10	1,000	2	100	"	"	2 91	16 67	1,119 58
		25	1,000	2	100	"	"	2 91	16 67	1,119 58
		21	1,000	2	100	"	"	2 91	16 67	1,119 58

		11	1,000	2	100	"	"	2 91	16 67	1,119 58
		12	1,000	2	100	"	"	2 91	16 67	1,119 58
		72	1,000	2	100	"	"	2 91	16 67	1,119 58
		29	1,000	2	100	"	"	2 91	16 67	1,119 58
		5	1,000	2	100	"	"	2 91	16 67	1,119 58
		13	1,000	2	100	"	"	2 91	16 67	1,119 58
		68	1,000	2	100	"	"	2 91	16 67	1,119 58
		71	1,000	2	100	"	"	2 91	16 67	1,119 58
		78	1,000	2	100	"	"	2 91	16 67	1,119 58
290	Joseph Young....	69	1,000	2	100	"	"	2 91	16 67	1,119 58
		70	1,000	2	100	"	"	2 91	16 67	1,119 58
		14	1,000	21	1,050	Jan. 1, '58	"	397 68	16 67	2,446 35
		15	1,000	21	1,050	"	"	397 68	16 67	2,446 35
		16	1,000	21	1,050	"	"	397 68	16 67	2,446 35
		46	1,000	21	1,050	"	"	397 68	16 67	2,446 35
		55	1,000	2	100	July 1, '67—Jan. 1, '68		2 91	16 67	1,119 58
		65	1,000	2	100	"	"	2 91	16 67	1,119 58
		73	1,000	2	100	"	"	2 91	16 67	1,119 58
		54	1,000	2	100	"	"	2 91	16 67	1,119 58
		66	1,000	2	100	"	"	2 91	16 67	1,119 58
		67	1,000	2	100	"	"	2 91	16 67	1,119 58
		56	1,000	2	100	"	"	2 91	16 67	1,119 58
		57	1,000	2	100	"	"	2 91	16 67	1,119 58
		58	1,000	2	100	"	"	2 91	16 67	1,119 58
		59	1,000	2	100	"	"	2 91	16 67	1,119 58
		60	1,000	2	100	"	"	2 91	16 67	1,119 58
		61	1,000	2	100	"	"	2 91	16 67	1,119 58
		62	1,000	2	100	"	"	2 91	16 67	1,119 58
		63	1,000	2	100	"	"	2 91	16 67	1,119 58
		64	1,000	2	100	"	"	2 91	16 67	1,119 58
		40	1,000	2	100	"	"	2 91	16 67	1,119 58
		12	1,000							1,000 00
	Estimated interest on above bond No. 12									75 83

291	Joseph Young.	Judgment against Muscatine City, Oct. 15, 1864	7,659 83
	" "	Interest from Oct. 15, 1864, at 7 0|0, to M'ch 1, 1868	1,811 12
		Judgment against Muscatine City, May 16, 1867	57,605 16
	" "	Interest on same from May 16, 1867, *a* 7 0|0, to M'ch 1, '68	319 22
		Judgment against Muscatine City, May 16, 1864	5,256 74
		Costs	107 00
	" "	Interest from May 16, 1864, at 7 0|0, to March 1, 1868	1,423 67
		Judgment against Muscatine City, May 16, 1864	3,857 74
		Costs	50 00
	" "	Interest from May 16, 1864, to March 1, 1868, at 7 0|0	1,037 83
		Judgment against Muscatine City, May 16, 1864	3,745 75
		Costs	50 00
	" "	Inter'st from May 16, 1864, to March 1, 1868, at 7 0|0	1,007 45
		Judgment against Muscatine City, May 16, 1864	9,095 00
		Costs	50 00
	" "	Inter'st from May 16, 1864, to March 1, 1868, at 7 0|0	2,427 22
		Judgment against Muscatine City, May 15, 1867	33,399 59
		Costs	50 00
		Interest from May 15, 1867, to March 1, 1868, at 7 0|0	1,853 65
			373,250 99

292 *Muscatine County bonds.—Schedule K.*

Name of claimant.	No. of bond.	Amount of bond not due.	No. of cupons due March 1, 1868.	Amount of cupons past due.	Dates of maturity of cupons.	Interest on cupons to March 1, 1868.	Interest on principal of bonds from date of last cupon to March 1, 1868.	Total amount bonds, cupons, & interest to March 1, 1868.
Bro't forward		$168,000						$373,250 99
Joseph Young....	5	1,000	7	700	Jan. 1, '62. Jan. 1, '68.	155 19	16 67	1,871 86
	41	1,000	7	700	" "	155 19	16 67	1,871 86
	43	1,000	7	700	" "	155 19	16 67	1,871 86
	20	1,000	7	700	" "	155 19	16 67	1,871 86
	21	1,000	7	700	" "	155 19	16 67	1,871 86
	46	1,000	7	700	" "	155 19	16 67	1,871 86
	42	1,000	7	700	" "	155 19	16 67	1,871 86
	26	1,000	7	700	" "	155 19	16 67	1,871 86
	52	1,000	7	700	" "	155 19	16 67	1,871 86
	54	1,000	7	700	" "	155 19	16 67	1,871 86
	56	1,000	7	700	" "	155 19	16 67	1,871 86
	57	1,000	7	700	" "	155 19	16 67	1,871 86
	58	1,000	7	700	" "	155 19	16 67	1,871 86

	2	1,000	7	700	"	"	155 19	16 67	1,871 86
	16	1,000	7	700	"	"	155 19	16 67	1,871 86
	0	1,000	7	700	"	"	155 19	16 67	1,871 86
	34	1,000	15	750	Jan 1, 61.	"	192 45	16 67	1,959 12
	35	1,000	15	750	"	"	192 45	16 67	1,959 12
	36	1,000	15	750	"	"	192 45	16 67	1,959 12
	37	1,000	15	750	"	"	192 45	16 67	1,959 12
	38	1,000	15	750	"	"	192 45	16 67	1,959 12
	39	1,000	15	750	"	"	192 45	16 67	1,959 12
293 Joseph Young	87	1,000	15	750	Jan. 1, '61.—	Jan. 1, '68	192 45	16 67	1,959 12
	18	1,000	14	700	July 1, '61.	"	167 37	16 67	1,884 04
	3	1,000	14	700	"	"	167 37	16 67	1,884 04
	4	1,000	14	700	"	"	167 37	16 67	1,884 04
	5	1,000	14	700	"	"	167 37	16 67	1,884 04
	6	1,000	14	700	"	"	167 37	16 67	1,884 04
	7	1,000	14	700	"	"	167 37	16 67	1,884 04
	8	1,000	14	700	"	"	167 37	16 67	1,884 04
	9	1,000	14	700	"	"	167 37	16 67	1,884 04
	10	1,000	14	700	"	"	167 37	16 67	1,884 04
	11	1,000	14	700	"	"	167 37	16 67	1,884 04
	12	1,000	14	700	"	"	167 37	16 67	1,884 04
	13	1,000	14	700	"	"	167 37	16 67	1,884 04
	14	1,000	14	700	"	"	167 37	16 67	1,884 04
	15	1,000	14	700	"	"	167 37	16 67	1,884 04
	16	1,000	14	700	"	"	167 37	16 67	1,884 04
	1	1,000	13	650	Jan. 1, '62.	"	144 04	16 67	1,810 71
	17	1,000	14	700	July 1, '61.	"	167 37	16 67	1,884 04
	19	1,000	14	700	"	"	167 37	16 67	1,884 04
	3	1,000	7	700	Jan. 1, '62.	"	155 19	16 67	1,871 86
	4	1,000	7	700	"	"	155 19	16 67	1,871 86
	14	1,000	7	700	"	"	155 19	16 67	1,871 86
	17	1,000	7	700	"	"	155 19	16 67	1,871 86
	19	1,000	7	700	"	"	155 19	16 67	1,871 86
	18	1,000	7	700	"	"	155 19	16 67	1,871 86
	23	1,000	7	700	"	"	155 19	16 67	1,871 86
	1	1,000	.....	.....	.....	.....	.....	.....	1,000 00
294 Jos. Young..	31	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	32	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	33	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	34	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	35	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	36	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	38	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	39	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	40	1,000	.....	.....	.....	.....	.....	.....	1,000 00
	Estimated interest on the last above ten bonds								750 00
" "	Judgment against Muscatine County, May 16, 1867								6,180 00
	Costs								50 00
	Interest from May 16, 1867, to March 1, 1868, at 7 0\0								354 24

295 *Johnson County bonds.—Schedule K.*

Name of claimant.	No. of bond.	Amount of bond due.	No. of coupons due March 1, 1868.	Amount of coupons past due.	Dates of maturity of coupons.	Interest on coupons to March 1, 1868.	Interest on bond after date of maturity.	Total amount bonds, coupons & interest to March 1, 1868.
Joseph Young.....	16	1,000	3	105	Sept. 1, '62—Sept. 1, '63.	36 77	7 0\0 interest. 315 00	
	17	1,000	3	105	" "	36 77	315 00	
	18	1,000	3	105	" "	36 77	315 00	
	19	1,000	3	105	" "	36 77	315 00	
	15	1,000	3	105	" "	36 77	315 00	
	20	1,000	5	175	Sept. 1, 1861. "	67 39	315 00	

Davenport City bonds.

Joseph Young.....	76	500	11	275	Aug. 1, '60—Aug. 1, '65.	97 87	10 0\0 interest. 129 17	
	86	500	10	250	Feb. 1, '61. "	84 60	129 17	
	25	500	9	225	Aug. 1, '61. "	72 20	129 17	
	26	500	9	225	" "	72 20	129 17	
	27	500	9	225	" "	72 20	129 17	
	28	500	9	225	" "	72 20	129 17	
	71	500	9	225	" "	72 20	129 17	
	72	500	9	225	" "	72 20	129 17	
	60	1,000	9	450	" "	144 36	258 34	

296 *City of Davenport.—Schedule K.*

Name of claimant.	Amount of bonds due.	Amount of bonds not due.		Total amount of bonds, coupons, & interest to March 1, 1868.
Bro't forward.....	$11,000	$226,000		$499,400 21
Joseph Young			Judgment against the city of Davenport, May 15, 1867	56,390 75
			Interest from May 15, 1867, to March 1, 1868, at 7 0|0.....	3,135 95
" "			Judgment against the city of Davenport, May 11, 1866	3,094 03
			Interest from May 11, 1866, to March 1, 1868, *a* 7 0|0	407 96
			Total amount of Joseph Young's claim	$362,428 90
Mark Howard.....			Judgment against the city of Davenport, Oct. 15, 1864.....	3,562 00
			Interest from Oct. 15, 1864, to March 1, 1868, *a* 7 0|0.....	842 22
			Total amount of Mark Howard's claim.....	$4,404 22
John Weber.....			Judgment against the city of Davenport, Oct. 19, 1865	2,581 00
			Interest from Oct. 19, 1865, to March 1, 1868, *a* 7 0|0	14,121 59
			Total amount of John Weber's claim.....	$10,002 59

Endorsed: Filed February 28th, 1868.

W. G. WOODWARD, *Clerk.*

297 On this day, to wit, the eighteenth day of April, A. D. 1868, came B. F. Allen, receiver in the above-entitled cause, and filed in the office of said clerk a report; which report is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD, JOHN WEBBER, & JOSEPH Young *ag't* THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company, the Chicago and Rock Island Railroad Company, the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Willson, the County of Muscatine, the City of Muscatine, the County of Scott, and the City of Iowa City. } Receiver's report.

B. F. Allen, appointed and qualified as receiver in the above-entitled cause, respectfully reports to the court—

298 1. That on the 29th day of February, A. D. 1868, he served the paper hereto appended and marked Exhibit A, upon John F. Tracy, president of the Chicago, Rock Island, & Pacific railroad, and upon Francis H. Tows, secretary of said company, by delivering to them, at the city of New York, a true, full, & correct copy of the same; that the said Tracy and Tows, as officers of said railroad company, declined to deliver to me said bonds, cupons, and moneys in the decree in this cause ordered to be delivered, assigning as a reason therefor that the said railroad company, its officers, and agents had been restrained and enjoined from paying over or parting with said trust fund, or any

part therof, by an order of the supreme court of the city and county of New York, in a certain cause wherein one John D. Maxwell was plaintiff, and the defendants herein were defendants; that they then and there exhibited to me a paper purporting to be a copy of said injunction order, served on them on the second day of October, 1866; which paper is hereto appended and marked "Exhibit B." That the said Tracy and Tows assigned as a further reason for declining to surrender to me the said bonds, cupons, and moneys, that several writs of attachment
299 had issued out of the said supreme court of the city and county of New York, and had been served upon them as officers of said railroad company, attaching all of said funds then in the hands of said company; that said attachments were served in the months of July & August, A. D. 1866; that a delivery of the said funds to me, under the order of this court, would subject them to punishment for a violation of said injunction and render them and the company liable on the process of attachment.

2. That at the same time & place, & in the same manner, I caused the said demand and exhibit to be served upon the defendants Stanton, Elliott, & Wilson, acting as committee or trustees of said fund; that they declined to surrender the bonds, cupons, and moneys mentioned in the decree herein, and assigned as a reason therefor that said bonds, cupons, and moneys had never come into their hands; that said bonds, cupons, and moneys had remained under the control of said railroad company, by virtue of a contract which they had made with said company, to hold & disburse them according to the terms of the trust, or as the law should direct.

300 Wherefore I pray the court to make such further order as may be deemed neesessary, directing the receiver as to the further discharge of his duties herein.

B. F. ALLEN, *Receiver.*

Exhibit A.

In the circuit court of the United States for the district of Iowa.

MARK HOWARD, JOHN WEBBER, & JOSEPH YOUNG *ag't*
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI AND Missouri Railroad Company, the Chicago & Rock Island Railroad Company, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, the County of Muscatine, the City of Muscatine, the County of Scott, and the City of Iowa City.

To the said defendants:

I hereby call your attention to the decree of the circuit court of the United States for the district of Iowa in the above-entitled cause,
301 and to the certificate of the clerk of said court, showing that I have duly qualified as receiver in said cause, under the appointment made in said decree. I hereby request, require, & demand that you will, without delay, deliver to me all bonds, cupons, & moneys in your hands, or in anywise under your control, required by the terms of said decree to be paid to me as receiver.

If you have not the custody or control of any such bonds, cupons, or moneys, or, having them, decline to surrender them in compliance with

this demand, I have to request that you will so advise me in writing, that I may report the same to the court.

B. F. ALLEN, *Receiver.*

To which is appended a full & correct copy of the interlocutory decree herein, a copy of which is hereinbefore set out, commencing folio 632 of this transcript.

Following the said copy decree is a certificate, executed by W. G. Woodward, the clerk of this court, in the words and figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL
ag't
THE CITY OF DAVENPORT ET AL.

302 I, Wm. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, do hereby certify that the foregoing is a true, full, and complete copy of the decree in the cause above entered, as the same appears of record in my office.

And I do further certify that B. F. Allen, the receiver therein named and appointed, has duly qualified for the discharge of the duties of such receivership, by executing & filing the bond required by said decree, which bond has been approved by me.

In testimony whereof witness my signature and the seal of said court hereto affixed this 22d day of February, 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

Exhibit B.

Supreme court.

JOHN D. MAXWELL
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, the Chicago & Rock Island Railroad Company, the Chicago, Rock Island, & Pacific Railroad Company, Geo. W. Stanton, jr., John Elliott, Blakeley Wilson, & the City of Muscatine.

303 On the complaint herein duly verified and affidavits thereto annexed, it is, on motion of Burrill, Davidson & Burrill, plaintiff's attorneys, ordered that the several defendants herein, them and each of them, directors, agents, and servants, be, and they are hereby, restrained from, and enjoined against, paying over to the stockholders of the Mississippi & Missouri Railroad Company, or to any person for them, or for or on account of in respect to any shares of the stock of said company, as dividends or otherwise, any part of the proceeds of the sale, assignment, or transfer of the property, assets, or effects of the said last-mentioned railroad company, or any part of the sum in and by the agreement in the complaint mentioned, or in or by any other agreement, or in any manner appropriated, set apart, or agreed to be paid to the said stockholders, or for or on account of the stock of the said company, or any part of the sum of five hundred and fifty-two thousand four hundred

dollars in the complaint mentioned, or other sum agreed to be paid by the defendants, or either of them, to the stockholders of the said company, or to any person for them, or for their benefit, or on their account or behalf, until the further order of the court.

GEO. D. BARNARD.

Endorsed: Filed April 18, 1868.

W. G. WOODWARD, *Clerk.*

304 On this day, to wit, the twelfth day of May, A. D. 1868, came the defendants the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Willson, by John P. Cook, their solicitor, and filed in said clerk's office their exceptions to the master's report in said cause; which exceptions are in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *District of Iowa:*

In the circuit court of the United States, for said district.

MARK HOWARD, JOHN WEBBER, & JOSEPH Young
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, & others.

Exceptions taken by George W. Stanton, jr., John Elliott, Blakely Wilson, the Chicago, Rock Island, & Pacific Railroad Company,
305 defendants, to the report of A. H. Bennett, the master to whom this cause was referred by a decree made herein on the 30th day of October, 1867, and which report bears date the 27th day of February, 1868.

1st. For that the said master, in ascertaining the amounts due to the several parties has figured at an improper rate of interest, contrary to the terms of the contract between the parties, and to the law.

Wherefore the said defendants doth except to the said general report, and appeals therefrom to the judgment of this court.

JNO. P. COOK,
Sol'r for Def't's.

Endorsed: Filed May 12, 1868.

W. G. WOODWARD, *Clerk.*

306 On this day, to wit, the thirteenth day of May, in the May term 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

MARK HOWARD ET AL.
ag't
CITY OF DAVENPORT.

In this cause leave is given to file answer nunc pro tunc, as per agreement on file.

On the same day, to wit, on the thirteenth day of May, in the May term, A. D. 1868, in said court in the record of proceedings thereof in said entitled cause, is the following entry, to wit:

MARK HOWARD ET AL.
vs.
CITY OF DAVENPORT ET AL.

In this case the exceptions to master's report is overruled and the report confirmed, and the master is allowed four hundred dollars as fees for his services herein.

307 On this day, to wit, the fourteenth day of May, in the May term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company.

In pursuance of stipulation of the parties on file herein and on motion of John N. Rogers, solicitor for the parties, it is ordered that the petitioner of V. P. Douw, Christopher Y. Lansing, Jared F. Harrison, Joseph W. Clark, Harriet Le Conte, & Margaret I. Nisbet, as intervening creditors of the said Mississippi & Missouri Railroad Company, be filed herein nunc pro tunc as of the first day of October, 1867, and that the order of reference made herein at the last October term be also amended nunc pro tunc, so as to include the claims of said parties above named & require the master to ascertain and report the amount due to them in the same manner as the other claims so referred to him.

308 On this day, to wit, the ninth day of June, in the May term A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

UNITED STATES OF AMERICA, *District of Iowa, ss.*

At a term of the circuit court of the United States, for said district, begun & holden at Des Moines on the second Tuesday, being the twelfth day of May, A. D. 1868:

Present, the Hon. James M. Love, district judge.

MARK HOWARD & JOHN WEBBER, COMPLAINANTS, & Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants joining in the bill,
vs.
THE CITY OF DAVENPORT, THE MISSISSIPPI & Missouri Railroad Company, the Chicago, & Rock Island Railroad Company, the Chicago, Rock Island & Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Wilson, the City of Muscatine, the City of Iowa City, & the County of Scott, defendants.
} In chancery No. 69.

309 This cause came on to be further heard at this term, to wit, on the sixth day of June, A. D. 1868, upon the report of Asahel H. Ben-

nett, esq., the master to whom the same was referred by an order made therein at the October term, A. D. 1867, and thereupon all the parties appearing by their respective solicitors, except the Mississippi and Missouri Railroad Company, & exceptions having been taken to said master's report by the said Chicago, Rock Island, and Pacific Railroad Company, and the said Stanton, Wilson, and Elliott, and the court having considered the same, doth overrule said exceptions, whereupon, on motion of complainants' solicitors, it is ordered that said report be, and the same is hereby, in all things confirmed.

And thereupon the said cause coming on for final hearing, and having been argued by counsel, the court being fully advised in respect thereto, doth order & adjudge and decree as follows, to wit:

That the complainants and the said other parties who have come in & joined in the prosecution of this suit are entitled, as creditors of the said Mississippi and Missouri Railroad Company, to so much of the purchase money or consideration of five million five hundred thousand dollars ($5,500,000) for which the railroad and other property of
310 said Mississippi and Missouri Railroad Company was sold, under and by virtue of the terms of the contract of 1st November A. D. 1865, between said Mississippi & Missouri Railroad Company, and said Chicago & Rock Island Railroad Company, as was agreed & intended on said sale to be reserved and distributed among the stockholders of said Mississippi & Missouri Railroad Company, to wit, the sum of five hundred and fifty-two thousand three hundred and twenty dollars ($552,320), being equal to sixteen per cent. on the par value of the capital stock of said Mississippi and Missouri Railroad Company, to the same extent that the said Mississippi & Missouri Railroad Company, or its stockholders, would have been entitled to the same, in the absence of any claim thereon by such creditors, and subject to the same limitations & deductions & no other, to which the said Mississippi and Missouri Railroad Company or its stockholders would be subject. That any defficiency in the said purchase money or fund of five million five hundred thousand dollars ($5,500,000) after payment thereout of the charges and expenses of forecloseure & sale of the said railroad, and of making title thereto to the said Chicago, Rock Island, & Pacific Railroad Company, amounting to the sum of fifty-eight thousand
311 dollars ($58,000), to pay in full the several sums or dividends so agreed to be paid or distributed to the holders of the several classes of mortgage bonds of the said Mississippi and Missouri Railroad Company, and to the stockholders of said railroad company, must be borne by the said bondholders and stockholders, and the complainants & other creditors joining herein, as succeeding to the rights of said stockholders pro rata, and in proportion to the respective amounts so agreed to be distributed among them. That such defficiencies exists, and amounts to the sum of one hundred thousand six hundred and eighteen dollars ($100,618), and that the proportion thereof which should be charged upon and borne by the said complainants, and which should be deducted from the said sum of five hundred and fifty-two thousand three hundred and twenty dollars ($552,320) coming to them, is the sum of ten thousand seven hundred and ninety-three dollars ($10,793), leaving the nett sum of five hundred and forty-one thousand five hundred and twenty-seven dollars ($541,527), to which the complainants & others joining with them are entitled, with interest thereon at seven per cent. per annum, from the first day of December A. D. 1865.

312 It is therefore further ordered, adjudged, and decreed that the said Chicago, Rock Island, & Pacific Railroad Company do pay over

and deliver forthwith unto B. F. Allen, the receiver heretofore appointed in this case, the said sum of five hundred & forty-one thousand five hundred and twenty-seven dollars ($541,527), which payment shall be made either in cash or in the bonds of said company constituting and being part of its bonds to the amount of nine million dollars ($9,000,000) bearing interest at seven per cent. per annum, payable semi-annually, and secured by first mortgage on the entire line of the railroad of said consolidated company, its franchises & depots, from Chicago to Des Moines and the Oskaloosa branch thereof, as provided by contract of sale between the said Mississippi and Missouri Railroad Company and the Chicago & Rock Island Railroad Company, dated November 1st, A. D. 1865, which said bonds shall be taken and received in such payment at the par value of the principal sum secured to be paid thereby.

That upon so much of said five hundred and forty-one thousand five hundred & twenty-seven dollars ($541,527) as it shall pay to said receiver in cash, it do fully pay to said receiver in cash interest from December 1st, A. D. 1865, at seven per cent. per annum, down
313 to the time of such payment, and that on so much of said sum of five hundred and forty-one thousand five hundred and twenty-seven dollars ($541,527) as it shall pay in said bonds, it further pay to said receiver in cash interest at said rate, from December 1st, A. D. 1865, to the day from which said bonds on their face bear or carry interest, and shall also pay in cash to said receiver the interest which shall at the time of such payment have accrued and become due on said bonds, from the day last aforesaid, as represented by the cupons attached to said bonds.

And it is further ordered and decreed that said receiver do proceed to convert the said bonds so received by him into money, by the sale thereof at public sale at the stock exchange in the city of New York at not less than the current market price of said bonds at said stock exchange at such time as said receiver may think proper, for the best interest of the parties concerned; but before any such sale, said receiver shall first notify the said parties, their agents or attorneys, of the time of said sale, and the amount to be put on the market at any one time, and shall also give five days' public notice of said sale in a daily paper published in the city of New York.

That from the fund so realized and in his hands, he first pay and satisfy the costs of all the parties to this suit, as taxed, together
314 with his own costs and charges in the execution of this decree, to be settled and allowed by the court or a judge thereof.

That after payment of said costs & charges, he shall apportion the fund remaining in his hands among the said several complainants and claimants joining with them herein pro rata in proportion to the amounts of their said claims as ascertained by the said master's report herein, both matured and not matured, and which said amounts are as follows, to wit:

To Mark Howard, the sum of four thousand four hundred and four $\frac{22}{100}$ dollars ($4,404$\frac{22}{100}$).

To John Webber, the sum of ten thousand & two $\frac{59}{100}$ dollars (10,002$\frac{59}{100}$).

To Joseph Young, the sum of five hundred and sixty-two thousand four hundred and twenty-eight $\frac{90}{100}$ dollars ($562,428$\frac{90}{100}$).

To Clark Durant, the sum of thirty-six thousand five hundred and sixty $\frac{93}{100}$ dollars ($36,560$\frac{93}{100}$).

To Charles W. Durant, the sum of twenty-four thousand one hundred & twenty-eight $\frac{14}{100}$ dollars ($24,128$\frac{14}{100}$).

To Robert Murray, the sum of eleven thousand eight hundred & fifty-one $\frac{97}{100}$ dollars ($11,851 $\frac{97}{100}$).

To Henry Vanderveer, the sum of eight thousand six hundred & thirty-seven $\frac{42}{100}$ dollars.

315 To William Elliott, the sum of eleven thousand two hundred and thirty-nine $\frac{70}{100}$ dollars ($11,239$\frac{70}{100}$).

To George Bliss, the sum of thirty-eight thousand one hundred and sixty-six $\frac{04}{100}$ dollars ($38,166$\frac{04}{100}$).

To Betsey Tracy, the sum of twenty-one thousand nine hundred and eighty-four $\frac{06}{100}$ dollars ($21,984$\frac{06}{100}$).

To Harriet Le Conte, the sum of twenty-one thousand three hundred & eighteen $\frac{75}{100}$ dollars ($21,318$\frac{75}{100}$).

To Joseph W. Clark, the sum of twelve thousand seven hundred & twenty $\frac{60}{100}$ dollars ($12,720$\frac{15}{100}$).

To Volkert P. Douw and Christopher Y. Lansing, the sum of fifteen thousand seven hundred & ninety-four $\frac{8}{100}$ dollars ($15,794$\frac{08}{100}$).

To Margaret I. Nisbet, the sum of eight thousand two hundred & twenty-two $\frac{60}{100}$ dollars ($8,272$\frac{60}{100}$).

To Jared F. Harrison, the sum of fourteen thousand five hundred and twenty-two $\frac{48}{100}$ dollars ($14,522$\frac{48}{100}$).

That from the said fund so apportioned and set apart to each of said parties, the said receiver shall pay first to such party in full, (so far
316 as the fund so set apart to him will go,) the amount of claim now matured and due, as ascertained by said report, together with any additional amount which shall have matured & become due at the time of such payment, in the following order, viz: he shall first pay in full, or so far as such fund will go, any judgment or judgments of such party, if any; out of the remainder of such money, if any, he shall next pay in full, or so far as such moneys will go, any & all cupons which are due on the bonds held by such party; and out of the remainder of such moneys, if any, he shall next pay in full or so far as such funds will go, the principal of any bond or bonds which are matured and due; and in case that the amount of such matured bonds exceed the sum so applicable to their payment, then he shall pay in full such part of said bonds as said sum shall be sufficient to pay; and the remainder of the fund so apportioned and set apart to each of said parties shall in like manner be applied from time to time by the said receiver to the payment to such party of the amounts which shall thereafter become due and remain unpaid for either interest or principal on his or her respective claims, as and when the same shall fall due; provided, that if said George W. Stanton, jr., John Elliott, and Blakeley Wilson, trustees, shall file
317 with said receiver their written consent thereto, said receiver shall apply the said remainder or residue of the sum so set apart & appropriated to any of said parties who shall consent so to receive the same, in payment & satisfaction, so far as the same will go of the principal sum or sums so secured to be paid by the said guaranteed bonds held by them respectively, though not yet matured, they rebating all future interest thereon to the extent of such payments.

That before such payments are made, each of such parties shall produce and deliver to said receiver a written statement, certified by the clerk of the court to be correct, of the parties, date, and amount of each judgment of which he claims payment, and shall also produce & deliver to the receiver all cupons and bonds which are due and which may be paid in full, together with a receipt for such payment, and shall deliver to him a receipt stating the amount which is paid on any judgment,

bond, or cupon, which may be paid only in part, describing the sum so that it may be identified, and in case of such partial payment when made, the receiver shall indorse on such bond a statement of the amount so paid by him, and that the sum was paid from funds in his hands as receiver, and all bonds and cupons shall be produced to him for
318 such endorsement before such payment shall be made thereon; and the receiver shall file with the clerk of the court in which the judgment so paid in part is entered, a statement of the amount so paid by him thereon, and that the same was paid from funds in his hands as receiver, which statement shall by said clerk be filed & preserved among the papers in the cause.

And it is further adjudged & decreed that the shareholders of the Mississippi and Missouri Railroad Company who would be entitled to a distribution of said fund according to the agreement of November 1st 1865, and subsequent agreements between the stockholders and bondholders of [of] the Mississippi and Missouri Railroad Company, and said Stanton, Elliott, and Wilson, and who would have been entitled to said fund but for the claims of the creditors of the said Mississippi and Missouri Railroad Company, be, and they hereby are, subrogated to all the rights, claims, & remedies of the parties plaintiff respectively, in and upon each and all of such judgments, cupons, and bonds, as and when the same shall be so paid in full, against the several municipal corporations which are the principal debtors on such bonds and judgments; that such judgments shall remain in full force and effect against such corporations for the benefit of said shareholders, who may enforce
319 the collection of the same in the name of the plaintiffs therein or otherwise, but at their own costs & charges, by any process, remedy, or proceeding which said plaintiffs might have had for their own benefit; that any and all proceedings which may have been instituted by any of said parties for the collection of said demands shall remain and enure to the benefit of said shareholders, who shall be entitled to hold and continue the same in their own behalf, and, to this end, the plaintiffs respectively, on the payment of such judgments by the receiver, shall execute, acknowledge, and deliver to him an assignment of each judgment so paid, and the receiver shall, on the payment of the same, deliver to the lawfully constituted and authorized trustees or agents of said shareholders such assignments of said judgments, and shall also deliver to them all cupons and bonds which shall have been paid in full as above directed.

And it is further ordered, adjudged, & decreed, that if, after payment in full to any of said parties by said receiver of all sums which said party shall be entitled to have paid to him out of said fund, according to the directions hereinbefore given, there shall remain in said receiver's hands any portion or residue of the proportion of said fund set
320 apart and appropriated to such party, as hereinbefore directed, the same shall be reported by said receiver to the court and held subject to such further order and direction as may be made by the court in respect to the disposition thereof.

And thereupon the said Chicago, Rock Island, and Pacific Railroad Company, and the said George W. Stanton, jr., John Elliott, and Blakeley Wilson, by their solicitors, pray and appeal from this decree to the Supreme Court of the United States, & it is allowed to them, on their giving bond with sureties in the penal sum of five hundred dollars as provided by law, for the costs of the appeal; provided, that, in order to supersede and stay execution of said decree pending such appeal, they

shall give bond with sureties, conditioned to be approved as provided by law, in the penal sum of eight hundred thousand dollars.

J. M. LOVE, *Judge.*

Attest:
W. G. WOODWARD, *Clerk.*

321 On this day, to wit, the seventeenth day of June, came the plaintiffs, by Grant, their solicitor, and filed in the office of said clerk, papers in the words & figures following, to wit:

Supreme court chambers, city hall, New York, June 10th, 1868.

Present, Hon. D. P. Ingraham, justice.

THOMAS C. DURANT
vs.
THE COUNTY OF WASHINGTON.

THOMAS C. DURANT
ag'st.
THE COUNTY OF IOWA.

THOMAS C. DURANT
ag't
THE COUNTY OF MUSCATINE.

THOMAS C. DURANT
ag't
THE COUNTY OF POTTAWATTAMIE.

THOMAS C. DURANT
ag't
THE COUNTY OF POWESHIEK.

322 ELIZABETH MORGAN BLAKE
ag't
THE COUNTY OF IOWA.

Upon the annexed affidavit, and on motion of Davis & Edsall, plaintiffs' attorneys, ordered, that the above actions be discontinued without costs to either party.

Copy:

CHAS. E. LOEW, *Clerk.*

Endorsed: Filed June 17, 1868.

W. G. WOODWARD, *Clerk.*

On this day, to wit, the thirteenth day of June, A. D. 1868, came the defendants, the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, defendants, by Cook and Denny, their solicitors, and filed in said clerk's office their appeal bond, in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

Appeal to the Supreme Court of the United States.

323 Know all men by these presents, that we, the Chicago, Rock Island, and Pacific Railroad Company, and George W. Stanton,

jr., John Elliott, and Blakeley Wilson, as principals, and Abel Kimball and B. F. Allen, as sureties, are held and firmly bound unto Mark Howard, John Weber, Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, in the sum of five hundred dollars, to be paid to the said Mark Howard and his associates, as plaintiffs in this case, their executors, or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated 13th day of June, A. D. 1868.

Whereas the above-named Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson have taken an appeal to the Supreme Court of the United States
324 from the said circuit court of the United States for the district of Iowa, to reverse the judgment rendered in the above-entitled suit by the said circuit court of the United States in and for the district of Iowa:

Now, therefore, the condition of this obligation is such, that if the above-named Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson shall prosecute their appeal to effect, and answer all costs, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

Chicago, Rock Island, & Pacific Railroad Co.,
[C., R. I., & P. R. R. CO. SEAL.] By EBENEZER COOCK, *Sec'y*,
As witness the seal of said Comp'y.
GEO. W. STANTON, JR. [SEAL.]
JOHN ELLIOTT. [SEAL.]
BLAKELY WILSON. [SEAL.]
By their att'y of record, JNO. P. COOK.
ABEL KIMBALL. [SEAL.]
B. F. ALLEN. [SEAL.]

Approved:

J. M. LOVE,
Judge U. S. Dist. Court.
W. G. WOODWARD,
Clerk C. C. U. S. Iowa.

Endorsed: Filed June 13, 1868.

W. G. WOODWARD, *Clerk.*

325 The following paper, to wit, stipulation signed by counsel, appears on the files of said cause in said clerk's office, but there is no record, by indorsement thereon or otherwise, showing when or by whom the same was filed; said stipulation is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & ALS.
vs.
THE CITY OF DAVENPORT & OTHERS.

In this cause the Chicago, Rock Island, & Pacific Railroad Company, & Stanton, Elliott, & Wilson, parties, appeal from the decree.

The Mississippi and Missouri Railroad Company, that was duly served with a subpœna, & judgment rendered against them for want of an answer, does not appeal.

Now the defendants below who do appeal agree that, in the court above, they will present no question to the appellate court as to the rights of the appellants, which could not properly make if the said Mississippi & Missouri Railroad Company had appeared in the court below & answered.

November, 1868.

ROGERS & GRANT.
For Appellees.
JOHN P. COOK,
For the Appellants.

326 On this day, to wit, the twenty-second day of July, A. D. 1868, came B. F. Allen, receiver in said entitled cause, & filed in said clerk's office a report, which is in the words and figures following, with the exception of the copy of the decree referred to in the demand appended to said report, which is ommitted, a true and correct copy of the same appearing and commencing at folio 777 of this transcript, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } Report of receiver.

To the honorable judge of the circuit court of the United States for the district of Iowa:

The undersigned, receiver appointed by this court in the above-entitled cause, respectfully report to the court, that in the month of June, 1868, he caused demands in writing, a copy of which is hereto appended, to be served upon John F. Tracy, president of the Chicago, Rock Island, and Pacific Railroad Company; Francis H. Tows, as-
327 sistant secretary of said company, and Wm. F. Coolbaugh, treasurer of said company; that on the 16th day of July he received from the said John F. Tracy an answer to said demand, which is also appended hereto.

I was at the same time advised by John P. Cook, the attorney of the said railroad company, that the other persons above named would make no answer to my demand, for the reason that the answer of Mr. Tracy was for said company, and answers on their part unneesessary.

B. F. ALLEN, *Receiver.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK ISLAND, & PACIFIC RAILROAD COMPANY ET AL. } In equity.

In the matter of the demand made of the officers of the said Chicago, Rock Island, and Pacific Railroad Company, hereto attached by B. F. Allen, esq., receiver, &c.

To B. F. ALLEN, esq., *Receiver, &c.:*

328 SIR: In response to your demand on me and other officers of the said Chicago, Rock Island, and Pacific Railroad Company, for

the delivery to you, as receiver in the foregoing entitled case, of certain bonds, moneys, &c., specified in your notice, and a copy of the decree, which I attach hereto, I, John F. Tracy, president of said railroad company, say that I cannot comply with your request, nor can any officer of said railroad company, owing to legal disabilities; that is to say, there is now pending and undetermined in the city of New York, before Hon. George G. Barnard, one of the justices of said supreme court, several suits in relation to this same fund, commenced in the year A. D. 1866, and among others the following entitled causes:

123.

JOHN D. MAXWELL
against
THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

Action on judgment for $8,106 65 at issue. Not tried. Commenced in 1866.

130.

JOHN D. MAXWELL
ag't
THE SAME COMPANY.

Action on guaranty of Muscatine City bonds, cupons, & the same judgment of $8,106 65. Total claim $9,806 65 at issue. Not tried.

175.

JOHN WEBBER
ag't
THE SAME COMPANY.

Action on cupons of guarantied bonds of Iowa City, $800, & interest, at issue. Not tried.

329 143.

JOHN D. MAXWELL
ag't
THE SAME COMPANY AND OTHERS.

Creditors' bill to force the application of the 16 per cent. fund to pay debt of plaintiff, bill for self, and all creditors at issue. Not tried.

In the latter entitled cause Justice Barnard granted an injunction, the following being a true copy thereof:

Supreme court.

JOHN D. MAXWELL
ag'st
THE MISSISSIPPI & MISSOURI RAILROAD COMpany, the Chicago & Rock Island Railroad Company, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson, & the city of Davenport.

On the complaint herein duly verified, and affidavits thereto annexed, it is on motion of Burrill, Davison, & Burrill, plaintiff's attorneys,

The Mississippi and Missouri Railroad Company, that was duly served with a subpœna, & judgment rendered against them for want of an answer, does not appeal.

Now the defendants below who do appeal agree that, in the court above, they will present no question to the appellate court as to the rights of the appellants, which could not properly make if the said Mississippi & Missouri Railroad Company had appeared in the court below & answered.

November, 1868.

ROGERS & GRANT.
For Appellees.
JOHN P. COOK,
For the Appellants.

326 On this day, to wit, the twenty-second day of July, A. D. 1868, came B. F. Allen, receiver in said entitled cause, & filed in said clerk's office a report, which is in the words and figures following, with the exception of the copy of the decree referred to in the demand appended to said report, which is ommitted, a true and correct copy of the same appearing and commencing at folio 777 of this transcript, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } Report of receiver.

To the honorable judge of the circuit court of the United States for the district of Iowa:

The undersigned, receiver appointed by this court in the above-entitled cause, respectfully report to the court, that in the month of June, 1868, he caused demands in writing, a copy of which is hereto appended, to be served upon John F. Tracy, president of the Chicago, Rock Island, and Pacific Railroad Company; Francis H. Tows, as-
327 sistant secretary of said company, and Wm. F. Coolbaugh, treasurer of said company; that on the 16th day of July he received from the said John F. Tracy an answer to said demand, which is also appended hereto.

I was at the same time advised by John P. Cook, the attorney of the said railroad company, that the other persons above named would make no answer to my demand, for the reason that the answer of Mr. Tracy was for said company, and answers on their part unneesessary.

B. F. ALLEN, *Receiver.*

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT, THE CHICACO, ROCK Island, & Pacific Railroad Company et al. } In equity.

In the matter of the demand made of the officers of the said Chicago, Rock Island, and Pacific Railroad Company, hereto attached by B. F. Allen, esq., receiver, &c.

To B. F. ALLEN, esq., *Receiver, &c.:*

328 SIR: In response to your demand on me and other officers of the said Chicago, Rock Island, and Pacific Railroad Company, for

the delivery to you, as receiver in the foregoing entitled case, of certain bonds, moneys, &c., specified in your notice, and a copy of the decree, which I attach hereto, I, John F. Tracy, president of said railroad company, say that I cannot comply with your request, nor can any officer of said railroad company, owing to legal disabilities; that is to say, there is now pending and undetermined in the city of New York, before Hon. George G. Barnard, one of the justices of said supreme court, several suits in relation to this same fund, commenced in the year A. D. 1866, and among others the following entitled causes:

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THE SAME COMPANY.

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THE SAME COMPANY.

Action on cupons of guarantied bonds of Iowa City, $800, & interest, at issue. Not tried.

329 143.

JOHN D. MAXWELL
ag't
THE SAME COMPANY AND OTHERS.

Creditors' bill to force the application of the 16 per cent. fund to pay debt of plaintiff, bill for self, and all creditors at issue. Not tried.

In the latter entitled cause Justice Barnard granted an injunction, the following being a true copy thereof:

Supreme court.

JOHN D. MAXWELL
ag'st
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, the Chicago & Rock Island Railroad Company, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, & Blakeley Wilson, & the city of Davenport.

On the complaint herein duly verified, and affidavits thereto annexed, it is on motion of Burrill, Davison, & Burrill, plaintiff's attorneys,

ordered that the several defendants herein, them & each of them, directors, agents, and servants, be, and they are hereby, restrained from and enjoined against paying over to the stockholders
330 of the Mississippi & Missouri Railroad Company, or to any person for them, or for or on account of, in respect to any shares of the stock of said company, as dividends, or otherwise, any parts of the proceeds of the sale, assignment, or transfer of the property, assets, or effects of the last mentioned railroad company, or any part of the sum in and by the agreement in the complaint mentioned, or in and by any other agreement, or in any manner appropriated or set apart, or agreed to be paid to the said stockholders, or for or on account of the stock of the said company, or any part of the sum of five hundred and fifty-two thousand four hundred dollars in the complaint mentioned, or other sum agreed to be paid by the defendants, or either of them, to the stockholders of the said company, or to any person for them, or for their benefit, or on their account or behalf, until the further order of the court.

GEORGE G. BARNARD, *Justice.*

Wherefore the said Chicago, Rock Island, and Pacific railroad submits, that it cannot safely part with said bonds and money until the matters aforesaid are adjudicated.

JOHN F. TRACY,
Pres't C., R. I., & P. R. R. Co.

331 STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

Be it remembered that on this fifteenth day of July, A. D. 1868, before the undersigned, a notary public in & for said city, came John F. Tracy, whose proper signature appears signed to the foregoing paper, and made oath before me that, from his information, advise, and belief, the foregoing statement was made and signed by him, is true, as he verily believes.

[SEAL.] HENRY PRATT,
Notary Public.

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

To John F. Tracy, president, Ebenezer Cook, secretary, Francis H. Tows, ass't sec., Wm. F. Coolbaugh, treasurer Chicago, Rock Island, & Pacific Railroad Company:

332 Your attention is hereby called to the decree entered by the circuit court of the United States for the district of Iowa, in a certain cause wherein Mark Howard and others were plaintiffs, and the City of Davenport & others were defendants, a copy of which is hereto appended; and you, and each of you, are hereby requested and required to deliver without delay to my custody the bonds, cupons, & moneys, which it is in said decree adjudged and ordered shall be delivered to me as receiver in said cause, to be distributed to the parties, and in the manner directed and ordered by the terms of said decree.

Upon being advised of your readiness to comply with the demands above set out, I will attend at such place as you may designate, to re-

ceive said bonds, cupons, and money, and execute the neesessary receipts for the same.

And if, for any reason, you, or either of you, refuse to comply with the demand above set out, I request that you will communicate to me in writing the reasons for the same, & that such communication be made without delay, that I may report the same to the court at the next rule day.

B. F. ALLEN,
Receiver, &c.

333 Endorsed: Filed July 22nd, 1868.
W. G. WOODWARD, *Clerk.*

On this day, to wit, the thirty-first day of August, A. D. 1868, came the plaintiffs, by Grant, their solicitor, and filed in the said clerk's office a motion in said cause, which motion is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & ALS. *vs.* THE CITY OF DAVENPORT & OTHERS. } To rule day, 1st Monday in August, 1868.

Now come the plaintiffs, Mark Howard and others, and show to the court that B. F. Allen, esq., the receiver appointed in this cause, has demanded of the Chicago, Rock Island, & Pacific Railroad Company the money & bonds which they were required to deliver to him, and the said Chicago, Rock Island, and Pacific Railroad Company has refused to deliver the same to him.

And the plaintiffs, Howard, Weber, Young, Henry Vanderveer,
334 Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, C. Y. Lansing, & Jared F. Harrison, move the court, at the first Monday in August, 1868, at Des Moines, for an attachment against the president and directors of said company, or, if they cannot be found, for a writ of sequestration against the said Chicago, Rock Island, & Pacific Railroad Company, to compel obedience to said decree.

21st July, 1868.

GRANT AND SMITH,
ROGERS & PUTNAM,
For Pl'ffs.

We accept a service of this motion; the same need not be filed until first Monday in August, 1868, a copy being furnished to us.

July 21, 1868.

COOK AND DRURY,
Att'ys for Stanton Com., & C., R. I., & P. R. R. Co.

Endorsed: Filed August 31, 1868.
W. G. WOODWARD, *Clerk.*

335 The following papers, to wit, affidavit of James Grant, sworn to before S. F. Smith, notary public, August 6th, 1868; answer of defendants, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, to the rule to show cause, &c.; transcript of record in the case of Frederick A. Foster

vs. the Mississippi & Missouri Railroad Company, George W. Stanton, jr., & others, in the supreme court of New York; affidavit of James Grant, sworn to before William J. Birchard, notary public, on the 1st day of August, A. D. 1868; affidavit of James Grant, sworn to before William J. Birchard, notary public, 5th September, A. D. 1868, appear on the files in said cause, but there is no record by endorsement thereon, or otherwise, showing when or by whom the same were filed in said clerk's office; said papers are in the words & figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, James Grant, being duly sworn, depose and say: I am the
336 attorney of Mark Howard and the other plaintiffs; that the defendants, the Chicago, Rock Island, & Pacific Railroad Company, have been duly served with a copy of the decree in this cause, and have refused to execute the same, as will appear by the report of the receiver duly filed herein.

August 3, 1868.

JAMES GRANT.

Subscribed & sworn to by J. Grant, before me, & in my presence, this 6th day of August, A. D. 1868.

[SEAL.]

S. F. SMITH,
Notary Public, Scott Co., Iowa.

State of Iowa.—United States circuit court for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now comes the Chicago, Rock Island and Pacific Railroad Company, & George W. Stanton, jr., John Elliott, & Blakeley Wilson, and show cause, under the rule entered herein, why distribution of the fund provided in the decree, in this case entered, has not been made, & why they have not performed the decree, and for cause they represent and
337 show, that, on the insolvency of the Mississippi & Missouri Railroad Company, & when it was ascertained that the creditors of said company could not be paid in full, a meeting of the stock and bondholders of said company was held in the city of New York on the 20th day of October, A. D. 1865; that, at said meeting, it was resolved and agreed by a majority of the bond & stockholders that they would apportion & divide the money arising from the sale of the M. & M. Railroad Company as follows, to wit:

1st mortgage bondholders in full					$1,256,490
2nd " " "	80	per cent.	on	$400,000	320,000
Oskaloosa division,	62	"	"	664,935	416,212
Land grant bonds,	70	"	"	3,378,550	2,174,635
Construction bonds,	30	"	"	693,764	208,120
Capitol stock,	16	"	"	3,452,500	552,400
Expenses foreclosing mortgages					32,130
					5,500,000

And that, for the purpose of carrying into full effect said agreement, a committee of three should be appointed, who should act as trustees, in receiving a surrender of the bonds & stock; and that the said trustees should, on such surrender of bonds and stock, issue and deliver to each of such persons making such surrender a certificate entitling them to their portion of the money accruing from the sale of said M. & M. railroad, and its franchises and property; that the said George W.
338 Stanton, jr., John Elliott, and Blakeley Wilson were appointed said trustees; that, in pursuance of their appointment, they proceeded to act, and did receive a surrender of a large part of the said bonds & stock, & through the Union Trust Company, acting as their agent, gave to each party making such surrender a certificate of the fact.

They further show that the money & bonds arising from the sale of the said M. & M. R. R. Company, its franchises and lands, amounted to the sum five millions five hundred thousand dollars, & that said sale was made to the Chicago, Rock Island, & Pacific Railroad Company, & which payment was to be made principally in the bonds of said railroad company, and which said bonds were to be received by the holders of said certificates in lieu of money.

Said trustees further represent and show, that they, through their agents, proceeded to execute their trust by delivering to the holders of the bond certificates for their several proportions of said bonds.

Said trustees further represent and show, that, before delivering any of said bonds or money to any of the holders of certificate for stock surrendered, this suit was instituted to recover the sixteen per cent. set apart to the stockholders by said meeting of bond and stockhold-
339 ers that such proceedings were had in said suit that, by the judgment and decree of the court, the plaintiffs in this suit, as general creditors of the M. & M. R. R. Co., were entitled to the same, & from that judgment & decree an appeal has been taken to the Supreme Court of the United States, & the cause is there pending and undetermined. But the said judgment and decree was not superseded, and said trustees represent that the defendant, the Chicago, Rock Island, & Pacific Railroad Company, holding the said sixteen per cent. for the purpose of obtaining the opinion of the Supreme Court as to which of the two parties was entitled to the same, whether the holders of the certificates for surrendered stock, or the plaintiffs in this suit as general creditors of said M. & M. Railroad Company, & that the said trustees have not, & never have had, actual posession of said bonds.

Said trustees further represent & show that another and third party now claims said sixteen per cent. fund, & have instituted their suit in equity to recover the same, and have caused an injunction to be issued and served on them, and on the said Chicago, Rock Island, & Pacific Railroad Company, commanding, enjoining, & restraining them, their agents or attorneys, from paying out, or in any manner dispos-
340 ing of any part of the money arising from the sale of the said M. & M. R. R. Co., its franchises, or lands; &, particularly, these defendants represent and show, that, on the 30th day of July, A. D. 1868, one Frederick A. Foster commenced a suit in the supreme court of the State of New York, on the chancery side thereof, (the said court having jurisdiction of the parties and subject-matter,) in which the said Foster represents that he is the holder and owner of ten of the old M. & M. R. R. bonds, which bonds were secured by mortgage on the railroad, franchise, & lands of the said railroad company, and that he did not assent to the arrangement made at the said bond & stockholders meeting, & that if there is any fund in the hands of the said trustees claimed, or

pretended to be claimed, by any of the old stockholders, that he, as a bondholder, has a first and paramount right to the same; a copy of which said bill and papers filed in said case is herewith filed & made a part of this answer.

Said defendants further represent & show that one Mark Howard and others have heretofore filed their bill in the supreme court of the State of New York, on the chancery side thereof, in which these defendants are made parties defendants, and in which injunctions were issued
341 and served on these defendants, by the terms of which they were enjoined and restrained from paying out or parting with any part of the fund arising from the sale of the said M. & M. railroad, its franchises, or lands, which said suit is still pending, and the injunction issued therein in full force and operation.

Said trustees further answering, say that their only interest in this fund is to distribute and divide the same according to the legal rights of the respective parties claiming the same, and to protect themselves from liability; and the said Chicago, Rock Island, and Pacific Railroad Company have no further interest in this fund than as the agents of said trustees in delivering the bonds to the respective parties who may be legally entitled to the same, and these defendants cannot now deliver over this sixteen per cent. fund under the terms of the decree in this case, without violating the injunction issued & served on them in said Foster case, and thereby subjecting themselves to attachment and punishment for contempt of court.

These defendants, Stanton, Elliott, & Wilson, represent that they are all residents of the State of New York, except said Wilson, who resides in the State of New Jersey, and at all times subject to the process
342 of its courts, and that the said Wilson has his principal place of business in the city of New York.

In consideration of the premises, said defendants ask that strict compliance with the terms of the decree may be postponed until it may be determined by the several courts which of the said several parties are in law and equity entitled to this fund.

And now, having answered the rule & shown the cause why they have not complied with the terms of the decree, they pray to be discharged herein without day.

[SEAL.]

BLAKELEY WILSON.
JOHN ELLIOTT.
GEO. W. STANTON, JR.
FRANCIS H. TOWS,
Ass't Sec'y C., R. I., & Pacific R. R. C.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 29th day of August, 1868, before me appeared John Elliott & Blakeley Wilson, the defendants named in the foregoing answer, &, being by me duly sworn, they severally made oath that the same had been carefully read to them, and signed by them, & they know the contents thereof, & that the same is true to the best of their knowledge, remembrance, information, and belief.

343 [SEAL.]

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this thirty-first day of August, 1868, before me appeared George W. Stanton, jr., one of the defendants named in the foregoing answer, and, being by me duly sworn, made oath that he had carefully read the

said answer and signed the same, and knew the contents thereof, and that the same is true to the best of his knowledge, remembrance, information, & belief.

[SEAL.] EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

The people of the State of New York, by the grace of God, free and independent:

Know ye, that we, having examined the records and files in the office of the clerk of the county of New York, and clerk of the supreme court of said State for said county, do find a certain affidavits and injunc-
344 tion order there remaining, in the words and figures following, to wit:

[SEAL.]

Supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD CO., George W. Stanton, jr., and others, defendants.

CITY & COUNTY OF NEW YORK, *ss:*

Miller M. Lawson, of the city of New York, being sworn, says that on the 31st day of August, 1868, he served George W. Stanton, jr., one of the defendants at this action, at No. 10 Old Slip, in said city, with the injunction order granted in this action by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereto annexed, by delivering to and leaving with him a copy of said order, and at the same time showing to him a certified copy of the original injunction order.

MILLER M. LAWSON.

Sworn before me this 31st day of August, 1868.

EDWIN F. COREY,
Com'r of Deeds.

345 Supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
ag'st
THE MISSISSIPPI & MISSOURI RAILROAD COMpany, George W. Stanton, jr., John Elliott, Blakeley Wilson, the Chicago, Rock Island, & Pacific Railroad Company, Thomas E. Walker, & Francis Haven, defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

John D. Shedlock, of said city, being sworn, says that on the 29th day of August, 1868, he served Blakeley Wilson, one of the defendants in this action, at No. 56 Wall street, in said city, with the injunction order granted in this action by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereunto annexed, by delivering to and leaving with him a copy of said order, and at the same time showing to him a certified copy of the original injunction order.

JOHN D. SHEDLOCK.

Sworn before me this 29th day of August, 1868.

EDWIN F. COREY,
Com'r of Deeds.

346 In the supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMpany, George W. Stanton, junior, John Elliott, Blakeley Wilson, the Chicago, Rock Island, & Pacific Railroad Co., Thomas E. Walker, & Franklin Haven. } Injunction by order.

It appearing satisfactorily to me, by the affidavit of Frederick A. Foster, the plaintiff, & the verified complaint, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants George W. Stanton, junior, John Elliott, Blakeley Wilson, the Chicago, Rock Island, and Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, and the counsellors, attorneys, agents, and servants of them, or any or either of them, do desist and refrain from paying out, parting with, or disposing of, the whole or any part of the proceeds of the foreclosure and sale of the premises mortgaged to said Walker and Curtis B. Raymond by the Mississippi and Missouri Railroad Company, by its
347 mortgage, dated May 8, 1857, executed to secure the payment of its land grant bonds, in whatever funds, securities, or mortgages the said proceeds may consist, until the further order of this court; and in case of disobedience of this order, you will be liable to the punishment therefor prescribed by law.

Dated New York, July 31st, 1868.

(Signed) ALBERT CARDOZO, *J. S. C.*

Supreme court of the State of New York.

FREDERICK A FOSTER, PLAINTIFF,
ag't
THE MISSISSIPPI & MISSOURI RAILROAD COMpany, Geo. W. Stanton, junior, John Elliott, Blakeley Wilson, the Chicago, Rock Island, & Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, defendants.

CITY AND COUNTY OF NEW YORK, *ss:*

A. Francis Dawson, of the city of New York, being duly sworn, deposes and says that he is a clerk in the office of Fullerton, Knox
348 and Rudd, the attorneys for the plaintiff in the above-entitled action; that on the 31st day of July, 1868, he served the Chicago, Rock Island, and Pacific Railroad Company, one of the defendants in this action, with the injunction order granted therein by Mr. Justice Cardozo, dated July 31, 1868, a copy whereof is hereto annexed, by delivering to and leaving with Francis H. Tows, secretary of the said company, at the office of the said company, at the corner of Beaver and William streets, in the said city of New York, a copy of the said injunction order, and at the same time showed to him the original injunction order, and that deponent knew the said Tows, so served at the time of such service, to be the secretary of the said company.

Deponent further says that on the 20th day of August, 1868, at the corner of Nassau and Cedar streets, in the city of New York, he served Thomas E. Walker, one of the defendants in this action, with the said injunction order, by delivering to & leaving with him a copy thereof, & at the same time showed to him the said original injunction order, &

that deponent knew the person so served to be the same person mentioned and described in the summons in this action as one of the defendants therein.

349 Deponent further says that on the 28th day of August, 1868, at No. 56 Wall street, in the city of New York, he served John Elliott, one of the defendants in this action, with the said injunction order, by delivering to and leaving with him a copy of the said injunction order, and at the same time showed to him a certified copy of the said injunction order, and that deponent knows the person so served to be the same person mentioned and described in the summons in this action, as one of the defendants therein.

A. FRANCIS DAWSON.

Sworn to before me this 28th day of August, 1868.
[SEAL.] JOHN HAYES,
Notary Public in & for N. Y. Co.

In the supreme court of the State of New York.

FREDERICK A. FOSTER, PLAINTIFF,
against
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, GEORGE W. STANTON, junior, JOHN ELLIOTT, BLAKELEY WILSON, the CHICAGO, ROCK ISLAND, & PACIFIC RAILROAD COMPANY, THOMAS E. WALKER, and FRANKLIN HAVEN, defendants. } Injunction by order.

350 It appearing satisfactorily to me, by the affidavit of Frederick A. Foster, plaintiff, and by the verified complaint, that sufficient grounds for an order of injunction exist, I do hereby order that the defendants George W. Stanton, junior, John Elliott, Blakeley Wilson, the Chicago, Rock Island, and Pacific Railroad Company, Thomas E. Walker, and Franklin Haven, and the counsellors, attorneys, agents, & servants of them or any or either of them, do desist and refrain from paying out, parting with, or disposing of the whole or any part of the proceeds of the foreclosure and sale of the premises mortgaged to said Walker & Curtis B. Raymond by the Mississippi and Missouri Railroad Company, by its mortgage dated May 8, 1857, executed to secure the payment of its land grant bonds, in whatsoever funds, securities, or moneys, the said proceeds may consist, until the further order of this court; and in case of disobedience to this order, you will be liable to the punishment therefor prescribed by law.

Dated New York, July 31st, 1868.

ALBERT CARDOZO, *J. S. C.*

Endorsed: Filed August 28, 1868.

351 All of which we have caused by these presents to be exemplified, and the seal of our said supreme court to be hereunto affixed.

Witness George G. Barnard, justice, at the city of New York, the twenty-first day of August, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

CHAS. E. LOEW, *Clerk.*

I, George G. Barnard, presiding justice of the supreme court of the State of New York, for the city and county of New York, do hereby cer-

tify that Charles E. Loew, whose name is subscribed to the preceding exemplification, is the clerk of the said county of New York, and clerk of said supreme court for said county, duly elected & sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said supreme court, and that the attestation thereof is in due form.

Dated New York, August 31st, 1868.

GEORGE G. BARNARD.

352 STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the supreme court of said State, in and for the city and county of New York, do hereby certify that George G. Barnard, whose name is subscribed to the preceding certificate, is presiding justice of the supreme court of said State in and for the city and county of New York, duly elected & sworn, and that the signature of said justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 31st day of August, 1868.

[SEAL.] CHAS. E. LOEW, *Clerk.*

[5 cts. U. S. revenue, affixed and cancelled.]

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, James Grant, being duly sworn, depose that I am the attorney of John Webber & John D. Maxwell, in the State of Iowa, and
353 acted in concert with John E. Burrill, their attorney in New York, who brought suits there for the same bonds & cupons which are included in this suit.

That I know, of my personal knowledge, the suits in New York were commenced after the suit of Howard and Webber in this court; that I was consulted by Mr. Burrill about them, both before and after they were brought; that they were brought in aid of the suit in this court, and after they were begun I satisfied Mr. Burrill that the courts of New York had no jurisdiction and he would fail there. He agreed with me to let them remain on the docket there and file the claims of Maxwell and Webber in this suit. He sent to our firm a list of all the bonds & cupons held by Webber & Maxwell, & included in the New York suits, and we proved them up in Webber's name before the master in this case, and all the claims of Webber & Maxwell are included in the master's report and the final decree in this cause. Mr. Maxwell, the plaintiff in one of the New York suits, is now in Europe, & Mr. Burrill declines dismissing his suit, or either of the New York suits,
354 until he hears from Maxwell; which this affiant believes, as matters of law, that the New York's are no bar to any proceedings in this court being brought after those in this court, he has no objection to the courts making a further order in this cause, that before Weber receives his & Maxwell's share of the dividend the suits in New York should be dismissed and evidence thereof filed with the master.

JAMES GRANT.

Subscribed & sworn to by James Grant before me & in my presence this 1st day of August, A. D. 1868.

[SEAL.] W. J. BIRCHARD,
Notary Public, Scott County, Iowa.

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
ag't
THE CITY OF DAVENPORT AND OTHERS.

I, James Grant, being duly sworn, state that I am one of the attorneys of Mark Howard in relation to the bonds of the city of Davenport, guaranteed by the Miss. & Mo. Railroad Company, and have been for many years.

355 I have now in my posession all the bonds and cupons which are involved in this suit or guaranteed by the Miss. & Mo. company & owned by Howard; that I have had, with my partner, the whole management of the business of collecting said bonds & cupons, and I never was advised that he had any other attorney in relation thereto in New York or elsewhere; that he has left the entire management of collecting said bonds with me, & I originated this suit for him.

He never has informed me that he had or intended to bring any suit in New York upon these bonds & cupons, and has never been advised by me so to do, and I do not believe that he would bring such a suit without my advice. I never heard such a suit alluded to, except in the affidavit of Elliott, Wilson, & Stanton, shown to me this day; no record of any such suit is with said affidavit, and I do not believe it possible for such a suit to have been begun, or to be pending without my knowledge. I was not advised that such a pretense was to be made until this day, too late for me to get Mr. Howard's affidavit.

JAMES GRANT.

Sworn to & subscribed fore me, a notary public in & for Scott County, Iowa, at Davenport, in said county, on this 5th of September, 1868, by James Grant.

[SEAL.] W. J. BIRCHARD,
Notary Public, Scott County, Iowa.

356 The following stipulation appears upon the files of said cause in said court, but there is no record thereon, by indorsement or otherwise, showing when or by whom the same was filed. It is in the words and figures following, to wit:

Circuit court of the United States.

MARK HOWARD AND OTHERS
ag't
THE CITY OF DAVENPORT & OTHERS.

The plaintiffs, Mark Howard and others, having made a motion on the last Monday in August, 1868, to attach the defendant, the Chicago, Rock Island, and Pacific Railroad Company, & to sequestrate their property for a refusal to obey the decree of the court in this cause, and the receiver's report of such refusal being filed, and it being desirable to have the opinion of the court on the questions raised by the defendants, the said Chicago, Rock Island, & Pacific Railroad Company, it is agreed that the said defendants will show cause on the first Monday in September, at Des Moines, or such other place as may be agreed upon, before Judge Love, why said writs of attachment and sequestration

should not issue against said defendants in the same manner as if
357 a rule had been duly issued and served in the premises.

COOK AND DRURY,
Att'ys for R. R. Company.
J. GRANT,
For Mark Howard & others.

On this day, to wit, the twenty-first day of October, A. D. 1868, came the defendants, the Chicago, Rock Island, & Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakeley Wilson, by Cook & Drury, their solicitors, and filed in the office of said clerk a motion in said cause; which motion is in the words & figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
STANTON, ELLIOTT, WILSON, COMMITTEE, & the Chicago, Rock Island, & Pacific Railroad Company.

In the matter of the order and decree of this honorable court, di-
358 recting B. F. Allen, receiver, to receive the fund in this case and distribute the same as directed in the said decree, the said defendants, Stanton, Elliott, and Wilson, committee, and the Chicago, Rock Island, and Pacific Railroad Company respectfully represent and give the court to be informed that since the refusal of the officers of said co pany to deliver said fund to said receiver, for the reason that the courts of a foreign State, to wit, the State of New York, had enjoined them from doing so on account of a claim set up to said fund by other parties claiming to have a superior right thereto, of which this court has heretofore been informed, the said Stanton, Elliott, and Wilson, the said trustees, and the said Chicago, Rock Island, and Pacific Railroad Company, acting for the said trustees in the distribution of the said bonds, propose to deliver said bonds to the receiver appointed by this court, and submit the following statement of facts to the court:

First. The fund in controversy in this case is a trust fund, which these defendants hold for whomsoever it may be decided may be legally entitled to the same. That when the final decree in this case was rendered, defendants appealed therefrom to the United States Supreme Court, but it was not their duty as such trustees to involve themselves, or their
359 friends, in a pecuniary liability by superceding said judgment by a bond in an amount fixed by this court.

Second. These defendants submit that as usual trustees they are entitled to the protection of this honorable court, as well against pecuniary loss, as against the liability for contempt in acting against the orders of the courts of the State of New York; and

Third. Defendants submit that the said trust fund ought not to be distributed by the receiver until this case is finally disposed of and the rights of the several parties finally determined in the Supreme Court of the United States, because such distribution would hazard the fund, and in case of a reversal of said decree would be an irreparable injury to the cestui que trusts of these defendants, from the fact that a large amount of said fund, if distributed by the receiver, would go to citizens of foreign countries, & who are beyond the jurisidiction of the courts of the United States of America.

And, lastly, these defendants submit that the fund will be amply protected by the security of the receiver.

Wherefore, under the advice of counsel, these defendants will
360 pay to the said receiver, and submit to the order of the court in the premises, respectfully urging that the same may not be distributed among the parties whose pecuniary liability is unknown to this court & to these defendants, until the final disposition of this cause.

COOK AND DRURY,
Solicitors for Defendants.

STATE OF IOWA, *Scott County, ss:*

I, John P. Cook, of counsel for the foregoing named defendants, upon oath do state that I have read the foregoing statement, and that the same is true as I verily believe.

JNO. P. COOK.

Subscribed by the said John P. Cook in my presence, and by him sworn to before me this 19th day of October, A. D. 1868.

[SEAL.] LUDWIG BRUNING,
Notary Public, Scott Co., Iowa.

Endorsed: Filed October 21st, 1868.

W. G. WOODWARD, *Clerk.*

361 On this day, to wit, the 27th day of October, A. D. 1868, came Frederick A. Foster, by Withrow and Wright, his solicitors, & filed in said clerk's office his petition in said cause; which petition is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE MISSISSIPPI & MISSOURI RIVER RAILROAD Company et al.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

The petition of Frederick A. Foster respectfully showeth—

That your petitioner is a resident and citizen of the city of New York, in the State of New York; that the Mississippi & Missouri River Railroad Company, one of the defendants to the above-entitled suit, was organized under the laws of the State of Iowa, for the purpose of constructing a railroad therein. That on the eighth day of May, A. D. 1857, the said railroad company executed a mortgage bearing date of that day to Thomas E. Walker and Curtis B. Raymond, trustees,
362 for the uses and purposes therein mentioned. That by said mortgage the said railroad company conveyed to said trustees, and their successors, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railway, then owned or thereafter to be acquired by said company, constituting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, and the appurtenances thereof, and the right, title, and interest of said company to all the public lands of the United States granted by the act of Congress of May 15th, 1856, to the State of Iowa, and by the act of the legislature of the State of Iowa,

of July 14, 1856, to said company in trust for the benefit of the holders of bonds issued by said company, not exceeding in all seven millions of dollars in amount, being severally bonds for one thousand dollars each, dated May 8th, 1857, payable May 8th, 1877, to Clark Durant, or bearer, with interest at seven per cent. per annum, payable semi-annually, payable on the eighth days of November and May in each year, until the payment of the principal, on the presentation of the interest warrants or cupons to such bonds annexed, at the said company's office, in the city of New York, with the usual powers to said trustees, and
363 their successors, upon default to pay interest, to enter upon, foreclose, and sell the mortgaged premises for the satisfaction of said bonds.

That under and pursuant to said mortgage the said railroad company issued and sold to divers persons said bonds to the sum of $3,612,000, or thereabouts, and that ten of said bonds, with all the cupons thereof from and including the cupon payable on November 8th, 1868, are now owned and held by your petitioner.

That the said Curtis B. Raymond having declined to act as trustee under said mortgage, one Franklin Haven was appointed, in accordance with the provisions of said mortgage, to act as one of the trustees in his place. That the said railroad company, being in default in the payment of interest on said bonds, the said Thomas E. Walker and Franklin Haven, as trustees under said mortgage, filed their cross-bill in a certain cause pending in this court on the original bill of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., complainants against the said railroad company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.

364 That in said cross-bill they prayed a forecloseure of said mortgage, and the sale of said mortgaged premises for the satisfaction of the moneys owing thereon; that on the eighth day of May, 1866, it was in said cause decreed in and by this court, among other things, that there was due upon said bonds, for principal and interest, $4,239,982 71, to be paid to said trustees; that in default of payment within a time fixed, the said mortgaged premises should be sold, and the proceeds of said sale should be applied to the payment of the said land grant bonds, and the over-due cupons thereto attached; that pursuant to said decree, the said mortgaged premises were sold, all of which will more fully appear by the records of this court in said cause, to which this petitioner craves leave for greater certainty to refer.

That no part of the proceeds of said sale has been paid to the plaintiff in this action, nor upon said ten bonds, or any of them, held and owned as aforesaid, nor has the said company caused the said ten bonds, or the interest thereof, or any part of the same, to be paid; that the same remains wholly due and unpaid and owing to the plaintiff.

That on or about the 20th day of October, A. D. 1865, and
365 prior to the said forecloseure and sale, an arrangement or agreement was made by and between the said Mississippi & Missouri Railroad Company and other parties, including some of the holders of the bonds of the class above described, by which it was agreed that a portion of the proceeds of said sale, which of right was applicable to the payment of said bonds, should be withheld from such application, and improperly applied to the payment to the stockholders of said company, sixteen per cent. of the par amount of their stock therein, while the holders of said bonds should receive but seventy per cent. of the amount due them on the bonds; that your petitioner & those who

held the ten bonds above mentioned were not parties to such arrangement or agreement—have never assented to or approved the same; that your petitioner is informed and believes that the holders of a large number of the bonds of said class have never assented to or agreed to be bound by said arrangement.

That by reason of said arrangement or agreement, a portion of the proceeds of the sale of the mortgaged property & other property of said company, a sum amounting to over $500,000 has been set apart to the payment of said sixteen per cent. to the said stockholders.

366 That the plaintiffs in this cause, being general creditors of the said Mississippi and Missouri Railroad Company, having no lien upon the property of said company, or the proceeds arising from the sale thereof, by virtue of being holders of its mortgage bonds or of judgments against it prior to the mortgage executed as above recited, filed their bill in this cause, praying the application of said fund to the payment of their claims against said company.

That as your petitioner is informed, this court has, by its decree, ordered the payment of said fund by the Chicago, Rock Island, and Pacific Railroad Company, & George W. Stanton, jr., John Elliott, & Blakeley Wilson, to one B. F. Allen, as receiver of this court, to be distributed to the several complainants and intervenors herein, and applied in payment, as far as the same is adequate, of the demands which they have and hold against the said Mississippi & Missouri River Railroad Company, all of which will more fully appear by the record of this cause in this court, to which, for greater certainty, the petitioner refers.

That neither this petitioner nor any prior holder of his said ten bonds has at any time assented to said arrangement or agreement for the

367 payment of said proceeds to said stockholders, or to the complainants in this suit; that he has not in any manner relinquished or waived his rights to payment in full of said ten bonds, and all moneys due thereon out of the proceeds of said sale; that, as petitioner is informed and believes, many other persons holding bonds of said class, amounting to several hundred thousand dollars, have never assented to such agreement or application, or in any manner waived their rights to an application of said fund to the payment of their several bonds, and all the sums due thereon, in full; that the petitioner and said persons, nor any of them, were parties to the action when said decree was entered; that in law and equity they are entitled to receive payment in full of the bonds held by them out of said fund; that the petitioner has reason to fear, and does fear, that if said fund is now distributed by the receiver of the court to the several complainants and intervenors named in the decree, in the manner and form therein directed, such distribution will inflict irreparable injury upon the petitioner and those who hold bonds entitled to priority over said complainants and intervenors in the application of said fund, by

368 scattering the same and placing a considerable portion thereof in the hands of persons whose pecuniary responsibility is unknown, and some of whom reside in foreign countries beyond the jurisdiction of the courts of the United States.

That your petitioner, pursuant to the advice of counsel, has commenced, and is now prosecuting, in the supreme court of the city and county of New York an action against the said Mississippi & Missouri River Railroad Company, George W. Stanton, jr., John Elliott, Blakeley Willson, the Chicago, Rock Island, & Pacific Railroad Company, Thomas E. Walker, & Franklin Haven; that in his complaint, in said cause, he substantially stated the allegations hereinbefore contained,

excepting those touching this cause and the decree herein; that in said complaint he prays the judgment of the court against said defendants; that the said bonds of your petitioner, and of all others who have not assented to the arrangement and agreement above mentioned, with all interest accrued thereon, may be paid in full out of the proceeds of said sale, and that no part of said proceeds be paid to the stockholders of the said Mississippi and Missouri River Railroad Company, or to the
369 general creditors thereof, until the bonds of the plaintiff and like non-assenting bondholders shall have been paid in full; that he is now prosecuting said suit, and is willing that the plaintiff and intervenors herein may come in and defend the same.

That petitioner is informed & believes that an appeal has been taken from the decree in this court in this cause to the Supreme Court of the United States, but that no supersedeas bond has been filed in said appeal, & that the filing of such a bond now would not be effectual to suspend the execution of the decree.

Wherefore plaintiff prays the court to make an order directing the receiver in this cause to convert the bonds and cupons which now are or may hereafter come into his posession, under & by virtue of said decree, into money in the manner directed in said decree, and that he refrain from distributing the same to the complainants and intervenors herein under the directions of said decree, until the final disposition of this cause in the Supreme Court of the United States, & of the cause pending in the supreme court of the city and county of New York,
370 or if the court shall deem this relief improper under the circumstances of the case, it will make an order restraining the distribution of said fund, and directing that upon proper pleadings to be filed in this court, an issue be joined between this petitioner and the other holders of said bonds who have never assented to said agreement and arrangement, and the complainants and intervenors herein to determine and settle the priorities of the right of the parties to an application of said fund.

And your petitioner will ever pray.

FREDERICK A. FOSTER,
By WITHROW AND WRIGHT,
His Solicitors.

UNITED STATES OF AMERICA, *ss:*

Thomas F. Withrow, being duly sworn, deposes and says that he is one of the solicitors for Frederick A. Foster, the petitioner above set out; that he has been authorized to represent the said petitioner in this court, in the proceedings touching the subject-matter of said petition; that he has authority to present said petition to this court; that he has read the same & knows the contents thereof; & that the allegations therein contained are true as he verily believes.

THO. F. WITHROW.

371 Subscribed and sworn to by Thomas F. Withrow, before me, this 27th day of Oct., 1868.

W. G. WOODWARD, *Clk.*

Endorsed: Filed October 27, 1868.

W. G. WOODWARD, *Clerk.*

The record in the case of Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., vs. the Mississippi & Missouri Railroad Com-

pany, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, & John Webber, to which refrence is made in the petition of said Frederick A. Foster, is as the same remains of record in the office of said clerk in the words and figures following, to wit:

On this day, to wit, the fifth day of February, A. D. 1866, on the application of Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., by John N. Rogers, their solicitor, a writ of subpœna was issued out of the office of the clerk of the circuit court of the United States for the district of Iowa; which writ, with the return of the marshall of the United States for said district thereon, is in the words & figures following, to wit:

372 UNITED STATES OF AMERICA,
District of Iowa, ss:

The President of the United States to the Mississippi & Missouri Railroad Company, a corporation organized under the laws of the State of Iowa, Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, and David W. Coates, citizens of the State of Iowa, and Elisha P. Reynolds, a citizen of the State of Illinois, greeting:

We command you, and each of you, that you appear before the judges of the circuit court of the United States for the district of Iowa, at Des Moines, on the first Monday, it being the fifth day of March next (A. D. 1866), to answer to the bill of complaint of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., citizens of the State of New York, this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment or decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa; returnable on the first Monday of March, A. D. 1866.

373 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. S., at Des Moines, this the fifth day of February, A. D. 1866, and of the independence the year.

[SEAL.] W. G. WOODWARD, *Clerk*,
By J. BAUSMAN, *Deputy*.

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office in said court at Des Moines aforesaid, on or before the day to which the above writ is returnable as above stated, the bill of complaint will be taken against them as confessed, and a decree entered thereon accordingly.

W. G. WOODWARD, *Clerk*,
By J. BAUSMAN, *Deputy*.

[50 cts. U. S. revenue affixed & cancelled.]

Received the within subpœna on the day of February, 1866. Served personally the within subpœna by reading the same, and leaving copies with H. G. Angle & J. F. Ely, of Cedar Rapids, Linn Co., Iowa, on the ninth day of February, 1866.

PETER MELENDY,
U. S. Marshall for District of Iowa.

Service 2 copies	$4 00
Copy	1 00
140 mileage	8 40
	$13 40

Endorsed: Returnable to rule day, 1st Monday in March.
Filed March 5th, A. D. 1866.

W. G. WOODWARD, *Clerk.*

374 On the same day, to wit, on the fifth day of February, A. D. 1866, came Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., by John N. Rogers, their solicitor, & filed in said clerk's office their bill; which bill is in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Iowa:

Thomas C. Durant, of Brooklyn, in the county of Kings, and State of New York, & Jacob S. Wetmore & Robert B. Minturn, junior, of the city, county, & State of New York, all being citizens of the State of New York, bring this their bill against the Mississippi & Missouri Railroad Company, a corporation duly organized under and by virtue of the laws of the State of Iowa, and having its principal place at Davenport, in the county of Scott, & State of Iowa; Horatio G. Angle & John F. Ely, of Cedar Rapids, in the county of Linn, & State of Iowa, R. C. Morse, Andrew Taylor, & Thomas Leader, of Marengo, in the county of Iowa, State of Iowa, Mary J. McAninch, of the county of Muscatine, in the State of Iowa, David W. Coates, of Homestead, in the county
375 and State of Iowa, all being citizens of the State of Iowa, and Elisha P. Reynolds, of Rock Island, in the State of Illinois, a citizen of the State of Illinois.

And thereupon your orators complain & say that the said Mississippi & Missouri Railroad Company is a corporation organized under chapter 43d of the code of Iowa, enacted February 5th, A. D. 1851, for the purpose of building, maintaining, & operating a railroad from the eastern line of the State of Iowa, at or near Davenport, in the county of Scott, to the west line of the said State, at or near Council Bluffs, with power to construct, maintain, and use a branch railroad from the main line of said road southwesterly, by way of Muscatine, to the southern or western boundary of Iowa, or both, and with full power to borrow money for the purpose of building, maintaining, and operating such railroads, and on the other property and franchises of said company, to secure the repayment of the same.

And your orators further allege that said company has constructed accordingly a railroad extending from the east line of the State of Iowa, at Davenport aforesaid, westwardly to Kellogg, in the county of Jasper, in the State of Iowa, a distance of one hundred & thirty-five miles,
376 or thereabouts, and also a branch railroad connecting with said main line at Wilton, in the county of Muscatine, in said State, and extending southwestwardly, by the way of the city of Muscatine, to Washington, in the county of Washington, in said State, a distance of fifty-seven miles, or thereabouts, and is in posession of and operating said lines of railroad, with the stations, depot grounds & buildings connected with and appurtenant to the same, & is also the owner & in the posession and use of a large amount of rolling stock (so called) consisting of locomotive engines, passenger and freight cars of various kinds used upon said road, and appurtenant to the same.

And your orators further allege that by an act of the general assembly of the State of Iowa, approved July 14th, 1856, entitleed "An act to accept of the grant & to carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled 'An act making a grant of lands to the State of Iowa in alternate sections, to and in the construction of

railroads in the said State,' approved May 15th, 1856," and by which the lands, rights, powers, and priviledges granted to and conferred upon the State of Iowa by the said act of Congress were accepted upon
377 the terms, conditions, & restrictions contained in said act of Congress, so much of the said lands, interests, rights, powers, & priviledges as were granted and conferred by said act of Congress to aid in the construction of a railroad from Davenport via Iowa City & Fort Des Moines to Council Bluffs were disposed of, granted, and conferred to and upon the said Mississippi & Missouri Railroad Company subject to the conditions & restrictions in said act contained. And the said company did assent to and accept the provisions of said act by a written instrument under their corporate seal, and signed by the proper officers thereof, which was filed & recorded in the office of the Secretary of State of Iowa, within ninety days after the passage of said act, as provided by the thirteenth section thereof.

And your orators further allege, that under and by virtue of said acts the said Mississippi & Missouri Railroad Company became entitled to large quantities of land in the State of Iowa in alternate sections along the line of said road, as provided by said act of Congress, and subject to the conditions and restrictions in said act contained; and that by an act of the general assembly of the State of Iowa, approved January 28th, A. D. 1857, & supplemental to said act of July 14th, A. D. 1856, the
378 said company were fully authorized & empowered to make such disposition of the lands granted by said act of July 14th, 1856, by mortgage or deed of trust, as might be deemed proper for the purpose of securing any amount of construction bonds neesessary for the completion of said road, which bonds should bear interest, at a rate not to exceed ten (10) per cent. per annum, and to sell said bonds for the best price that could be procured; and by said act it was further enacted that any mortgage or deed of trust made upon the lands or road or property of said company should bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock, provided that nothing contained in said act should be so construed as in any manner to interfere with, change, or modify the rights of said State, or of the United States, to any lands granted by Congress to said State, and by said State to certain railroad companies therein, as a security for the completion of said roads, or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by said grant made by the United States to said State, and by the grant by said State to said companies, all of which by refrence to said acts will more fully and at large appear.

379 And your orators further allege that the said Mississippi & Missouri Railroad Company did, on or about the tenth day of December, A. D. 1861, make, execute, and deliver to your orators a certain indenture of mortgage under the corporate seal of said company, and signed in its behalf by its president and secretary, dated the day last aforesaid, wherein and whereby it was recited that the said company desiring to secure the payment of monies then owing for principal and interest on account of the cost of constructing their railroad, and to borrow money for the further construction & the completion & equipment of the same, did therefore, and for the purposes aforesaid, propose to issue a series of mortgage bonds, to be denominated second mortgage construction bonds, to the amount of seven hundred thousand dollars, five hundred of which bonds should be for the sum of one thousand dollars each, and four hundred for the sum of five hundred dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-

annually, on the first day of January and July of each year, and the principal reimbursable on the first day of January, A. D. 1882, to be secured by a mortgage or deed of trust, covering the entire property and franchises of said company, together with all its lands then owned, or which might thereafter be acquired by said company, which said mortgage would be a third lien upon all that portion of the said road lying between Davenport and Iowa City, & Davenport & Muscatine, and a second lien on all that portion of the main trunk lying between Iowa City & Council Bluffs, & of the Oskaloosa branch lying between Muscatine & Oskaloosa, as also upon the lands of said company as thereinafter specified.

And thereupon the said Mississippi & Missouri Railroad Company did in and by the said indenture of mortgage for securing the payment of the sums of money mentioned in the said series of second mortgage construction bonds or obligations, & the interest thereon, & also for and in consideration of the sum of one dollar in hand by your orators, did grant, bargain, sell, convey, and confirm unto your orators, and to their survivors or survivor, and to his or their successor or successors, who might be appointed or selected, in the manner and according to the conditions thereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, and neesessary for the uses and purposes thereof, then owned or thereafter to be acquired by said company, constituting or belonging to their railroad extending from Davenport aforesaid to Muscatine, and to Council Bluffs on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever appurtenant to the said railroad, and all the rolling stock and personal property of the said Mississippi & Missouri Railroad Company properly belonging to their road and appertaining thereto, and all the franchises, rights, and priviledges appertaining to the same, then existing or thereafter to be acquired.

Also all the right, title, interest, claim, or demand which said railroad company then had or should thereafter acquire in and to all public lands of the United States, granted by the act of Congress aforesaid to the State of Iowa, and by the general assembly of said State by the act aforesaid of July 14th, 1856, to the said railroad company, with all the estate, right, title, and interest, property & possession, claim or demand whatever, at law or in equity, of the said railroad company in and to the same, and each and every part and parcel thereof, excepting, saving, & reserving to the said company all lands then owned or thereafter to be acquired by them, which might not be included in the said grant of public land from the United States, and might not be neesessary for the uses and purposes of said railroad and the depots & rights of way therefor.

To have and to hold all and singular the lands and premises thereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto your orators or the survivor of them, and their successors appointed or selected in manner thereinafter provided, for the uses & purposes, and upon the trusts, terms, and conditions in said indenture set forth and declared.

Provided always, and upon the express condition, that if the said railroad company should well and truly pay or cause to be paid to the holders of the said second mortgage construction bonds, & every of them, the principal sums of money therein mentioned, according to the true intent & meaning thereof, with the interest thereon, at the times

and in the manner as thereinbefore provided, that then and from thenceforth said indenture, and the estate thereby granted, should cease & determine, and all the right, title, & interest in any and all property thereby conveyed to your orators, not then disposed of by them,
383 under the powers thereby conferred upon them, should revert to and rest in the said railroad company.

And in and by said indenture it was further witnessed, that the same, & the said series of second mortgage construction bonds or obligations, were made, executed, & delivered upon the terms, conditions, & agreements following, that is to say:

First. That the said trustees, your orators, or any of them, or their successors, might at any time be superseded by any number of the holders of said second mortgage construction bonds, who should be the owners of a majority in amount of all the said series of bonds secured by said indenture, & who should unite in the designation of such successor or successors; also that the number of such trustees might, in like manner, be reduced to two or one trustee, as the holders of a majority in amount of said series of bonds might elect.

Second. That said railroad company and its successors should & would pay, or cause to be paid, all taxes, charges, rates, levies, and assessments imposed, assessed, or levied, or which might thereafter be imposed, assessed, or levied upon the premises, franchises, or property thereby mortgaged, conveyed, and assigned, or intended so to be, and should and would, at its own proper cost, expense, & charges, do
384 or cause to be done all acts & things neesessary or proper to be done or performed, in order to preserve & keep valid and intact the lien or incumbrance upon all & singular the aforesaid premises, property, & franchises thereby created or intended so to be; and further, that said railroad company and its successors should not & would not at any time thereafter take, or in any way or manner use, interpose, or avail itself of any extension laws, stop laws, valuation laws, appraisment laws, or any other laws of the State of Iowa, then in force or thereafter to be enacted, & in force in said State, and which should alter, affect, or impair, or which should be designed, intended, or construed to alter, affect, or change the rights and interests of your orators, as therein declared, and which should in any way impede or obstruct the mode or manner of realizing, perfecting, or enforcing the rights and interests of any of the holders & owners of said second mortgage construction bonds, as therein provided, or which should affect, change, or alter the time, place, mode, means, or manner of perfecting, enjoying, or enforcing any of such rights or interests, as the same were therein declared.

Third. That the said railroad company should and would well
385 and truly pay the said sums of money in the said second mortgage construction bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per cent. per annum, at the times, in the manner, & at the place specified therein; and further, said railroad company therein and thereby did covenant and agree, that in case it should for the space of thirty days make default in the payment of the semi-annual interest, due or to become due, upon any or either of said second mortgage construction bonds, then after the lapse of said thirty days, the whole principal sum mentioned in each and all of said second mortgage construction bonds should forthwith become due, and payable & and the lien or incumbrance by said indenture created, for the security & payment thereof, might be at once enforced, anything in the said second mortgage construction bonds, or in said indenture to the contrary thereof, notwithstanding, and that

it should & might be lawful, and your orators, & the survivors & survivor of them, & their & his successors or successor, were thereby expressly authorized and empowered, upon the request in writing of a majority in amount of the holders of said second mortgage con-
386 struction bonds, to enter into and upon, & to take actual posession of all & singular the railroad premises, franchises, rights, property, real and personal, and effects, by said indenture granted, conveyed, assigned, mortgaged, pledged, transferred, & set over, or intended so to be, as a security for the payment of said second mortgage construction bonds, and by themselves, & by their or his agent or agents, to take & collect, & receive the tolls, earnings, income, and profits thereof, and of every part thereof, or to be derived therefrom, & that they, your orators, & the survivors & survivor of them, and their & his successors and successor, upon the written request as above specified, should and might proceed, and were thereby expressly authorized and empowered, but within such reasonable time as they might deem proper, not less than sixty days, and upon and after public notice, by advertisement of at least eight weeks, in one or more newspapers, published in the cities of Davenport, Des Moines, & Iowa City, in the State of Iowa, and the city of New York, in the State of New York, to proceed to sell at public auction in the said city of Davenport, in the State of Iowa, to the
387 highest bidder, as well all and singular the said railroad, rights & franchises, as all other the property, real & personal, & premises by said indenture granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be, and all benefit and equity of redemption whatsoever of the said railroad company, of and to the same, and every part & parcel thereof, together with the benefit of the franchise belonging thereto, or connected therewith; subject, however, to the prior liens or incumbrance of the hereinbefore recited several first and second mortgages upon the several divisions of said road, its lands, and other property whatsoever; and as the attorney or attorneys of the said railroad company, for the purpose, & by said indenture duly appointed & constituted, your orators, & the survivors & survivor of them and their & his successors & successor, should have full power and authority, to make, execute, and deliver to the purchasers or purchaser thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee simple, or otherwise, or said railroad, lands, tenements, & real estate, & of all & singular the said personal and other property, rights, & premises thereby granted, assigned,
388 transferred, or conveyed as aforesaid; which sale so to be made as aforesaid, & which deeds, conveyances, assignments, and transfers, so to be made & delivered as aforesaid, should operate to convey, assign, transfer, and vest in said purchaser or purchasers all the right, title, interest, & estate whatsoever, revisionary or otherwise, of the said railroad company, of, in, & to the premises so sold, conveyed, assigned, or transferred; and which said sale so to be made should be a complete & perpetual bar, both at law and in equity, against the said railroad company, its successors, & assigns, and all persons or parties claiming by, from, or under it or them in any wise or manner whatsoever; and that out of the moneys or proceeds arising either from said tolls, earnings, or receipts of said railroad and premises, or out or from said sale, so to be made as aforesaid, after first deducting the expenses, disbursements, costs, charges, & counsel fees incurred in and about the conducting of said sale, or the running and operating said railroads, as well as all interest due & unpaid upon each and all of the first & second mortgages therein before recited, as they should be entitled respectively, under and by

389 virtue of the seperate divisions upon which said several prior deeds of trust had their respective liens; that they, your orators, & the survivors and survivor of them, their and his successors and successor, should pay such second mortgage construction bonds, or so many as should then be outstanding & unpaid, together with all arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys, if any there should be, to the said railroad company, its successors or assigns.

All of which, by reference to said indenture of mortgage, to which your orators, for greater certainty, crave leave to refer, will fully & at large appear.

And your orators further allege that said indenture of mortgage having been duly acknowledged, was duly recorded in the recorder's offices of the several counties through which said railroad runs, and in which the property covered thereby is situate.

And your orators further allege that said railroad company, in pursuance of their design and intention, as recited in said indenture of mortgage, and for the purposes therein set forth, did execute & issue, under their corporate seal, a series of bonds or obligations so called
390 & known as second mortgage construction bonds, of even date with said mortgage, whereby said company obligated itself to pay to the holders or bearers of said bonds respectively the sums therein expressed, on the first day of January, A. D. 1882, with interest thereon at the rate of seven per cent. per annum, and payable semi-annually on the first days of January and July, in each and every year, until the maturity of said bonds. Said bonds are severally and respectively for the sums of one thousand dollars, or five hundred dollars each, as recited in said mortgage, and the aggregate principal sum secured by the same actually issued & outstanding is the sum of six hundred & ninety-five thousand dollars. Said bonds are now held and owned by divers persons, who have purchased the same, and are valid and subsisting obligations against said company to the full amount thereof, with the interest accrued & unpaid thereon.

And your orators further allege that the condition of said indenture of mortgage has been broken, in this, to wit, that the said Mississippi & Missouri Railroad Company has failed & neglected & refused to pay, or cause to be paid, to the holders of said bonds, or any of them, the
391 semi-annual interest due & payable thereon on the first day of July, A. D. 1865; & also the semi-annual interest due & payable thereon on the first day of January, A. D. 1866, or any part thereof; all the interest on said bonds, or some of them, has been duly demanded, whereby & in pursuance of the provisions of said indenture of mortgage, as hereinbefore set forth, the whole principal sum mentioned in each and all of said bonds has become due & payable, & said bondholders, and your orators in their behalf, are entitled to at once enforce the lien or incumbrance by said mortgage created for the security and payment thereof.

And your orators have been requested by the holders of a majority in amount of said bonds to proceed to enforce and foreclose said mortgage by suit in this court.

And your orators further allege, on information and belief, that said railroad, and other property of said company, covered by the said indenture of mortgage, is subject to the lien of four several other and prior mortgages thereon, executed by said company, to wit: A mortgage
392 dated July , A. D. 1855, to Edward W. Dunham, trustee, covering so much of said railroad as extends from Davenport to Iowa City and Muscatine, and known as the first division of said road, with

the rolling stock procured for and connected with said division, and securing bonds to the amount of one million dollars, bearing interest at seven per cent. per annum, payable semi-annually.

2nd. A mortgage dated July 1, 1856, to Edward W. Dunham, trustee, conveying the same property as said first mortgage, and subject thereto, securing bonds to the amount of four hundred thousand dollars, bearing interest at eight per cent. per annum, and payable semi-annually.

3rd. A mortgage dated July 1, 1856, to Edward W. Dunham, trustee, conveying so much of said railroad as extends from Muscatine to Oskaloosa, and all rolling stock procured for and connected with the same, or appertaining thereto, securing bonds to the amount of five hundred and ninety thousand dollars, or thereabouts, actually issued, but intended and expressed to secure the amount of one million four hundred and twenty-five thousand dollars, with interest at seven per cent. per
393 annum.

4th. A mortgage dated May 8th, 1857, to Thomas E. Walker & Curtis B. Raymond, trustees, conveying said railroad, and property appurtenant thereto, from Iowa City to Council Bluffs, & the rolling stock belonging to said division of the road; and also all the interest of said company in said lands granted as aforesaid by the United States to the State of Iowa, and by said State to said company; which mortgage is expressed & intended to secure bonds to the amount of seven millions of dollars, of which three millions six hundred and twelve thousand, or thereabouts, are actually issued and outstanding, bearing interest at the rate of seven per cent. per annum.

And your orators further allege, on information and belief, that said railroad company, though in posession of and operating said railroad, and recieving the rents and profits thereof, have not applied and are not applying said rents and profits, over and above the expenses of running and operating said railroad, to the payment of other claims against said company, which were and are not liens on said railroad and other property, or of liens thereon, are subsequent & subject to
394 the liens of said several mortgages; that the interest of said mortgages is in arrear, due, and upaid, whereby the conditions of the same have been broken, and the mortgagees have become entitled to enfore the same, and that the amount of indebtedness secured thereby is, by such failure to pay said interest, accumulating, whereby the rights and security of the bondholders, secured by the said mortgage to your orators, are imperilled and put in jeopardy; that the said railroad company is wholly insolvent, and unable to pay its debts and liabilities.

And your orators further allege that the said defendants Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David M. Coates, & Elisha P. Reynolds, as your orators are informed & believe, severally and respectively have, or claim to have, some lien upon, or interest in, the said railroad and other property of the Mississippi & Missouri Railroad Company, or some part or parts thereof, by reason of certain judgments recovered by them respectively against said company or otherwise, which several liens or interests, if any, are subsequent to that of said mortgage to your orators,
395 and subject thereto.

To the end, therefore, that the said defendants, if they can, show why your orators should not have the relief hereby prayed, and may, the said Mississippi & Missouri Railroad Company, upon the corporal oaths of its officers, and the said remaining defendants, upon their several and respective corporal oaths, and according to the best and utmost of their several & respective knowledge, remembrance, information, and

belief, full, true, direct, and perfect answer make to this your orators' bill.

And that an account may be taken of the amount due upon the said bonds secured by the said mortgage to your orators, both for principal & interest, and that the said railroad company may be decreed to pay the said sum or sums so found due and owing to the holders of said bonds respectively, together with the costs and charges of this suit, and that in default of such payment the said railroad, & roadway stations, depot lands, and other lands appurtenant to said railroad and neesessary for the uses and purposes thereof, together with all locomotives,
396 cars, buildings, machinery, tools, & implements whatever, appurtenant to said railroad, and all the rolling stock and personal property of the said railroad company, properly belonging to their road, and appertaining thereto, and all the functions, rights, and priviledges appertaining to the same, and also all the right, title, and interest, claim or demand, of the said railroad company in and to the said lands so granted by the United States, by the State of Iowa, and by said State to said company, and all other property, rights, or interests of whatever description, covered or conveyed by said mortgage, may be sold by and under the direction of a master of this court, at public auction, to the highest bidder for cash; that the money arising from said sale may be brought into court; that there may be paid thereout, first, the costs and charges in this suit incurred, and your orators' neesessary and reasonable expenses and disbursements in the execution of the trust conferred upon them by said mortgage, including reasonable and proper fees and compensation of solicitors and counsel in this suit, and, secondly, the
397 amounts due upon said bonds for principal and interest, so ascertained as aforesaid, to the holders thereof respectively; that the master or officer, under whose direction said sale shall be made, may execute all neesessary and proper deeds and conveyances for effectually conveying to and vesting in the purchaser or purchasers at such sale, the tietle to the said property so sold, and that the said purchaser or purchasers may be put in full & complete posession of the said property; that, from and after such sale, the said defendants and each of them, and all & every person or persons claiming under them, or either of them, subsequently to the filing of this bill, may be forever bound and foreclosed of and from all and every interest, estate, right, claim, or equity of redemption of, in, or to the property and premises so sold as aforesaid, & every part and parcel thereof.

And that, in the mean time and pending this suit, some fit & proper person may, by order of this court, be appointed a receiver to take charge and posession of the said railroad, and other property, real & per-
398 sonal, appertaining and belonging thereto, including rolling stock, and to manage and operate the same under the direction of this court, and to collect & receive the rents and profits thereof, and to apply the same after paying thereout the neesessary expenses of said receivership, and of running and operating said road, to the payment of the said interest on the several mortgages and bonds secured by the same in the order of their priority, and that the said railroad company, its officers and agents, may be ordered and required, on the appointment of said receiver, to surrender posession and control of said railroad & other property to him.

And that your orators may have such further and other relief in the premises as the nature of the case shall require, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orators the most gra-

cious writ of subpœna of the United States of America, to be directed to the said Mississippi & Missouri Railroad Company, Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader,
399 Mary J. McAninch, David W. Coates, & Elisha P. Reynolds, thereby commanding them, and every of them, at a certain day and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orators shall ever pray, &c.

JACOB S. WETMORE,
JOHN N. ROGERS,
Solicitor for Plaintiffs.

UNITED STATES OF AMERICA, STATE OF NEW YORK,
City and County of New York, Southern District of New York:

Jacob S. Wetmore, being duly sworn, says that he is one of the plaintiffs in the foregoing bill; that he has read the same and knows the contents thereof; and that the said bill is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

400 JACOB S. WETMORE.

Subscribed & sworn to before me this 31st day of January, 1866.
JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

Endorsed: Filed Feb'y 5, 1866.
W. G. WOODWARD, *Clerk C. C.*,
By J. BAUSMAN, *Dep'ty.*

On this day, to wit, the fifth day of March, A. D. 1866, came said plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office the affidavit of Frederick P. James, David M. Hughes, and John P. Yelverton; which affidavit is in the words and figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als. } In equity.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
401 *City & County of New York, ss:*

Frederick P. James, David M. Hughes, & John P. Yelverton, of said city of New York, being duly sworn, depose and say that they are jointly the holders of such of the bonds issued by the said Mississippi and Missouri Railroad Company known as the "second mortgage construction bonds," dated December 10th, 1861, and secured by the mortgage executed by said railroad company to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., which is set forth in the bill in this suit, & sought to be foreclosed herein, as are specified by the numbers thereof in the list or schedule hereto annexed marked A. Said bonds are respectively for one thousand dollars and five hun-

dred dollars each as specified in said schedule & are payable to C. W. Durant, or bearer, January 1st, 1882, with interest at seven per cent. per annum, payable semi-annually on the first days of January and July in each year. A copy of one of said bonds is hereto annexed, marked B.

402 Deponents further say that the interest on said bonds due July 1st, 1865, and January 1st, 1866, is due & wholly unpaid, and deponents are the holders of the cupons therefor; that the interest due at those days respectively on all the others of said bonds secured by said mortgage (which amount in the aggregate to the principal sum of six hundred & ninety-five thousand dollars) is also due and wholly unpaid, although the same has been demanded.

Deponents further say that the interest on the bonds of said railroad company secured by four several other mortgages prior in date to the above-mentioned mortgage, as the same are set forth in the bill of complaint herein, to wit, two mortgages to Edward W. Dunham, trustee, on the first division of said railroad, extending from Davenport to Iowa City and Muscatine; another mortgage to the same trustee on the "Oskaloosa branch" (so called) of said railroad, running westwardly from Muscatine, and another mortgage to Curtis B. Raymond, and Thomas E. Walker, trustees, on the portion of said railroad running westwardly from Iowa City and to be extended to Council Bluffs,

403 is also in arrear, due, and unpaid for the period of heretofore; that the bonds secured by said four mortgages amount in the aggregate to fifty-six hundred and two thousand dollars, to wit: Amount of bonds secured by first mortgage on eastern division, dated July 1st, 1856, one million dollars; amount secured by second mortgage on eastern division dated , four hundred thousand dollars; amount secured by mortgage on Oskaloosa branch, five hundred and ninety thousand dollars; amount secured by mortgage on road west of Iowa City, three million six hundred and twelve thousand dollars.

Deponents further say that this suit is brought at their instance and request; that the said railroad company is utterly insolvent & unable to pay its debts.

D. M. HUGHS.
F. P. JAMES.
JOHN P. YELVERTON.

U. S. AMERICA, *So. Dist. of New York, ss:*

FEBRUARY 28, 1866.

404 David M. Hughes & Frederick P. James and John P. Yelverton, being severally duly sworn, each for himself deposes and says that he has read the foregoing affidavit & knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information & belief, and as to those matters he believes it to be true.

JAMES BETTS METCALF,
U. S. Commissioner So. Dist. of New York.

(A.)

Number of bonds, Mississippi and Missouri Railroad Company, "2nd mortgage construction," surrendered to J. P. Yelverton, F. P. James, and D. M. Hughes, trustees.

201, 202, 203, 204, 205, 206, 207, 208, 211, 212, 213, 214, 215, 216, 217. 301, 302, 303, 484, 485, 37, 44, 135, 190, 440, 459, 480, 486, 487, 488, 18,

52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 72, 73, 76, 77, 78, 80, 81, 82,
83, 84, 85, 86, 95, 96, 97, 98, 99, 273, 341, 342, 343, 344, 345, 497,
405 45, 46, 47, 482, 483, 322, 323, 324, 394, 395, 396, 397, 398, 399,
400, 320, 321, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361,
362, 363, 364, 365, 366, 367, 368, 377, 378, 371, 372, 373, 374, 375, 376, 369,
370, 436, 437, 438, 439, 441, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290,
291, 292, 293, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 226, 227, 248, 333,
334, 335, 336, 337, 434, 312, 313, 314, 315, 308, 309, 310, 311, 350, 431,
432, 133, 317, 318, 319, 349, 257, 258, 392, 393, 134, 254, 255, 256, 249,
251, 252, 253, 481, 489, 184, 185, 329, 330, 331, 430, 294, 295, 296, 328,
173, 174, 188, 189, 121, 445, 167, 171, 172, 424, 101, 102, 103, 261, 122,
421, 422, 423, 109, 110, 111, 112, 104, 262, 106, 107, 108, 118, 119, 120,
127, 113, 105, 115, 116, 117, 218, 219, 220, 230, 128, 114, 130, 131, 132,
236, 237, 238, 239, 231, 129, 233, 234, 235, 306, 307, 379, 380, 240, 232,
260, 304, 305, 229, 92, 93, 94, 160, 241, 162, 274, 228, 259, 332, 75, 347,
221, 161, 223, 224, 225, 450, 451, 458, 325, 348, 222, 447, 448, 449, 384,
386, 387, 391, 326, 446, 381, 382, 383, 327—289 of $1,000 00.

530, 531, 533, 535, 536, 537, 595, 625, 655, 656, 657, 658, 659, 660,
406 664, 666, 775, 776, 777, 840, 717, 718, 719, 720, 721, 773, 704, 705,
706, 707, 708, 709, 710, 711, 712, 713, 857, 626, 627, 628, 629, 630,
631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645,
819, 820, 821, 661, 662, 729, 521, 522, 667, 671, 601, 603, 651, 665, 747,
751, 752, 753, 754, 771, 523, 524, 525, 526, 527, 528, 529, 534, 594, 596, 604,
663, 672, 673, 674, 675, 746, 774, 779, 784, 791, 792, 801, 802, 803, 804,
805, 806, 807, 808, 815, 816, 817, 818, 851, 869, 870, 879, 880, 882, 646,
647, 648, 649, 650, 676, 668, 669, 670, 501, 502, 503, 504, 505, 506, 507,
508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 565, 564,
563, 566, 567, 568, 569, 570, 571, 572, 605, 606, 607, 608, 687, 688, 689,
690, 691, 692, 759, 766, 768, 769, 770, 780, 781, 782, 785, 790, 809, 810, 811,
812, 813, 814, 761, 864, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560,
561, 562, 609, 610, 611, 612, 798, 800—202 of $500.

Summary.

289,	$1,000 each	$289,000
202,	500 "	101,000
		$390,000

The bonds numbered below have been surrendered, additional to those given above:

407 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 70, 71, 74, 79, 100,
137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 339, 340,
346, 8, 9, 10, 11, 12, 13, 14, 15, 17, 69, 279, 280, 168, 169, 170, 176, 177,
263, 264, 265, 299, 300, 36, 149, 150, 151, 60, 61, 62, 63, 64, 20, 21, 22,
25, 26, 16, 19, 175, 297, 298, 278, 277, 6, 7, 48, 49, 50, 23, 24, 51, 87, 88,
89, 90, 91, 153, 163, 164, 166, 186, 266, 267, 268, 269, 270, 271, 272, 275,
276—100 of $1,000.

841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 685, 865, 885, 686, 593,
716, 532, 700, 701, 702, 703, 714, 715, 738, 755, 756, 757, 760, 767, 833,
834, 835, 836, 837, 838, 839—36 of 500.

(B.)

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Company, 2nd mortgage construction bond.

No. ——. $1,000 00.

408 The Mississippi and Missouri Railroad Company acknowledge

themselves to owe to C. W. Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said C. W. Durant, or the holder hereof, at their office in the city of New York, on the first day of January, 1882, and also interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest warrants at the office of the company, in the city of New York.

The payment of this bond is secured by a deed of trust, or mortgage, upon the said railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust, or mortgage, and in the annexed certificate of the trustees.

In testimony whereof, the said company has hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, this tenth day of December, 1861.

[SEAL.] JOHN A. DIX, *Pres't.*

(Signed) H. PRICE, *Secretary.*

409 The undersigned trustees do hereby certify that the Mississippi and Missouri Railroad Company have executed to us a deed of trust, or mortgage, subject to the mortgages already existing on the different divisions of said road, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Davenport to the city of Council Bluffs, and to Washington, in the State of Iowa, and also all the right, title, & interest which the said company now have or shall hereafter acquire in and to all public lands of the United States granted by acts of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in the said instrument, in trust, for the benefit of the holders of their bonds of similar tenor as the foregoing, except that part of the same are for $500 each, and part for $1,000 each, issued and to be issued to an amount not exceeding in all seven hundred thousand dollars, with power to take posession of said railroad, its equip-
410 ments and appurtenances, and sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds, as in manner provided for in said deed of trust, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds; and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which said lands are situated.

(Signed) THOMAS C. DURANT,
JACOB S. WETMORE, *Trustees.*

Copy of cupon.

The Mississippi and Missouri Railroad Company will pay the bearer, at their office in the city of New York, on the first day of January, 1882, thirty-five dollars for interest due that day on their bond No. 1.

$35. (Signed) H. PRICE, *Sec'y.*

Endorsed: Filed March 5th, 1866.

W. G. WOODWARD, *Clk,*
By J. BAUSMAN, *D'p'ty.*

411 On the same day, to wit, on the fifth day of March, A. D. 1866,

52, 53, 54, 55, 56, 57, 58, 59, 65, 66, 67, 68, 72, 73, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 95, 96, 97, 98, 99, 273, 341, 342, 343, 344, 345, 497,
405 45, 46, 47, 482, 483, 322, 323, 324, 394, 395, 396, 397, 398, 399, 400, 320, 321, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 377, 378, 371, 372, 373, 374, 375, 376, 369, 370, 436, 437, 438, 439, 441, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 226, 227, 248, 333, 334, 335, 336, 337, 434, 312, 313, 314, 315, 308, 309, 310, 311, 350, 431, 432, 133, 317, 318, 319, 349, 257, 258, 392, 393, 134, 254, 255, 256, 249, 251, 252, 253, 481, 489, 184, 185, 329, 330, 331, 430, 294, 295, 296, 328, 173, 174, 188, 189, 121, 445, 167, 171, 172, 424, 101, 102, 103, 261, 122, 421, 422, 423, 109, 110, 111, 112, 104, 262, 106, 107, 108, 118, 119, 120, 127, 113, 105, 115, 116, 117, 218, 219, 220, 230, 128, 114, 130, 131, 132, 236, 237, 238, 239, 231, 129, 233, 234, 235, 306, 307, 379, 380, 240, 232, 260, 304, 305, 229, 92, 93, 94, 160, 241, 162, 274, 228, 259, 332, 75, 347, 221, 161, 223, 224, 225, 450, 451, 458, 325, 348, 222, 447, 448, 449, 384, 386, 387, 391, 326, 446, 381, 382, 383, 327—289 of $1,000 00.

530, 531, 533, 535, 536, 537, 595, 625, 655, 656, 657, 658, 659, 660,
406 664, 666, 775, 776, 777, 840, 717, 718, 719, 720, 721, 773, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 857, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 819, 820, 821, 661, 662, 729, 521, 522, 667, 671, 601, 603, 651, 665, 747, 751, 752, 753, 754, 771, 523, 524, 525, 526, 527, 528, 529, 534, 594, 596, 604, 663, 672, 673, 674, 675, 746, 774, 779, 784, 791, 792, 801, 802, 803, 804, 805, 806, 807, 808, 815, 816, 817, 818, 851, 869, 870, 879, 880, 882, 646, 647, 648, 649, 650, 676, 668, 669, 670, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 565, 564, 563, 566, 567, 568, 569, 570, 571, 572, 605, 606, 607, 608, 687, 688, 689, 690, 691, 692, 759, 766, 768, 769, 770, 780, 781, 782, 785, 790, 809, 810, 811, 812, 813, 814, 761, 864, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 609, 610, 611, 612, 798, 800—202 of $500.

Summary.

289,	$1,000 each	$289,000
202,	500 "	101,000
		$390,000

The bonds numbered below have been surrendered, additional to those given above:

407 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 70, 71, 74, 79, 100, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 339, 340, 346, 8, 9, 10, 11, 12, 13, 14, 15, 17, 69, 279, 280, 168, 169, 170, 176, 177, 263, 264, 265, 299, 300, 36, 149, 150, 151, 60, 61, 62, 63, 64, 20, 21, 22, 25, 26, 16, 19, 175, 297, 298, 278, 277, 6, 7, 48, 49, 50, 23, 24, 51, 87, 88, 89, 90, 91, 153, 163, 164, 166, 186, 266, 267, 268, 269, 270, 271, 272, 275, 276—100 of $1,000.

841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 685, 865, 885, 686, 593, 716, 532, 700, 701, 702, 703, 714, 715, 738, 755, 756, 757, 760, 767, 833, 834, 835, 836, 837, 838, 839—36 of 500.

(B.)

UNITED STATES OF AMERICA, *State of Iowa:*

Mississippi and Missouri Railroad Company, 2nd mortgage construction bond.

No. ——. $1,000 00.

408 The Mississippi and Missouri Railroad Company acknowledge

themselves to owe to C. W. Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said C. W. Durant, or the holder hereof, at their office in the city of New York, on the first day of January, 1882, and also interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest warrants at the office of the company, in the city of New York.

The payment of this bond is secured by a deed of trust, or mortgage, upon the said railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust, or mortgage, and in the annexed certificate of the trustees.

In testimony whereof, the said company has hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and secretary, this tenth day of December, 1861.

[SEAL.] JOHN A. DIX, *Pres't.*

(Signed) H. PRICE, *Secretary.*

409 The undersigned trustees do hereby certify that the Mississippi and Missouri Railroad Company have executed to us a deed of trust, or mortgage, subject to the mortgages already existing on the different divisions of said road, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Davenport to the city of Council Bluffs, and to Washington, in the State of Iowa, and also all the right, title, & interest which the said company now have or shall hereafter acquire in and to all public lands of the United States granted by acts of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in the said instrument, in trust, for the benefit of the holders of their bonds of similar tenor as the foregoing, except that part of the same are for $500 each, and part for $1,000 each, issued and to be issued to an amount not exceeding in all seven hundred thousand dollars, with power to take posession of said railroad, its equip-
410 ments and appurtenances, and sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds, as in manner provided for in said deed of trust, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds; and that the foregoing is one of the several bonds described in and secured by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which said lands are situated.

(Signed) THOMAS C. DURANT,
JACOB S. WETMORE, *Trustees.*

Copy of cupon.

The Mississippi and Missouri Railroad Company will pay the bearer, at their office in the city of New York, on the first day of January, 1882, thirty-five dollars for interest due that day on their bond No. 1.

$35. (Signed) H. PRICE, *Sec'y.*

Endorsed: Filed March 5th, 1866.

W. G. WOODWARD, *Clk,*
By J. BAUSMAN, *D'p'ty.*

411 On the same day, to wit, on the fifth day of March, A. D. 1866,

came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office the affidavit and exhibits of David M. Hughes, in said cause, that Exhibit B, appended to said affidavit, is a copy of "Proceedings of a meeting of bond and stockholders of the Mississippi & Missouri Railroad Company, held October 18th, 1865, & statement of General John A. Dix;" a full, true, & correct copy of which appears in this transcript, beginning at folio 203 thereof, and said affidavit and Exhibit A thereto appended are in the words & figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany & als.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

412 David M. Hughes, being duly sworn, saith that on or about the first day of July, eighteen hundred & sixty-two, the said company were unable to pay, and were indebted for interest on all their bonds.

That being so unable to pay said interest they obliged the holders of the said bonds to fund their interest and cupons due according to a certain agreement hereto annexed marked A, and that said company issued to said holders for said interest income bonds to a large amount, which income bonds have not been paid, and interest on the same is due from the first day of January, 1865, to January, 186 , and that said company are unable to pay the same.

Deponent further saith that said company has recently called a meeting of its stockholders in the city of New York and laid before them the condition of the said company, and did there state and represent that said company could not pay in full the obligations of said company, and did advise the said stockholders and bondholders of every description to sell all their securities and all the property of said company
413 upon the following terms mentioned in the annexed Schedule B.

That the pay for the same was to be in other securities and not in cash.

That the officers of said company are now endeavoring to carry out the terms of said proposition for a sale of the said property of said company to the Rock Island Railroad Company, and that B. Wilson, John Elliott, and George W. Stanton are a committee appointed for the purpose of consumating such an arrangement, and that by this plan of sale it is attempted to oblige the holders of the bonds mentioned in the suit herein to sell their said bonds at the rate of thirty cents on the dollar, & to loose all interest due.

Deponent further saith that on or about or during the years 1862, 1863, 1864, & 1865 the said company became indebted to the Rock Island Railroad Company in a large amount of money, viz., to the amount of six hundred thousand dollars, and that being so indebted and with no means to pay the same they gave up the use & management of the said road to the Rock Island Railroad Company, allowing them to fix
414 the tariffs on the two roads, conjointly to run the said roads as one, to receive all the income of the same, and apply the same to their own use and to the liquidation of their own debts.

That the officers of the said Mississippi and Missouri Railroad Com-

pany had no control or management of the said road; that no funds were paid into the hands of the treasurer of the said Mississippi & Missouri Railroad Company; and that all the business of said road was done in the interest of the Rock Island Railroad Company, & greatly to the prejudice of the interest of the said Mississippi & Missouri Railroad Company, and to the entire neglect & refusal to devote any of the proceeds for the payment of the interest on the various bonds of the said Mississippi & Missouri Railroad Company.

D. M. HUGHES.

FEBRUARY 28, 1866.

U. S. AMERICA, *So. Dist. of New York, ss:*

David M. Hughes, being duly sworn, deposes and says that he has read the foregoing affidavit, and knows the contents thereof; that
415 the same is true of his own knowledge, except as to the matters therein stated upon information & belief, and as to those matters he believes it to be true.

JAMES BETTS METCALF,
U. S. Commissioner, So. Dist. of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of James Betts Metcalf, whose name is subscribed to the annexed affidavit, and the signature of the same is in his proper handwriting; and I do further certify that he was at the time of signing the same a United States commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name & affixed the seal of said circuit court, this 28th day of February, in the
416 year of our Lord one thousand eight hundred and sixty-six, and of the independence of these United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

A.

Whereas the Mississippi and Missouri Railroad Company is embarassed in its financial abilities and unable, from its earnings at present, to meet its floating debt and the interest due on the bonds issued on the different sections of its road;

And whereas, upon the completion of said road from Marengo to Grinnell, upon which portion a large amount of money has been already expended, the said company will be entittled to receive from the government of the United States a large amount of land;

And whereas the early construction and completion of said road to Grinnell, by the increase of business to be derived therefrom, and the posession of the additional quantity of land, is of vital importance to the holders of bonds secured by mortgage on the several sec-
417 tions of the road, in giving a permanent value to the same;

And whereas the company cannot dispose of its securities except at a sacrifice ruinous to themselves & unjust to the present bondholders, and has no means of providing the funds neesessary to complete the road as aforesaid, except by a pledge of the future earnings of the road

which are applicable properly to the payment of interest on the bonds of the company:

Now, therefore, we, the said Mississippi and Missouri Railroad Company, and the undersigned holders of the bonds of the said railroad company, of the class and to the amount set opposite our names, or representing the same by legal authority, do each of us, for him, her, & themselves severally and mutually, covenant and agree as follows, namely:

1st. That the holders of the bonds of the Oskaloosa division, and the holders of the first mortgage first division bonds, shall receive for their cupons past due and unpaid, including cupons of July, 1862, and the three cupons next to become due, including that of January, 1864, income bonds to be issued by said railroad company, payable in
418 eight years, with interest half-yearly at the rate of seven per cent. per annum, from the time when said cupons became due; such cupons shall not be considered cancelled, but shall be held by Richard Irvin, of the city of New York, as trustee for all parties interested, as a security collateral to said income bonds, and until the same are paid, or the holders of said bonds shall, at their option, and in place of said income bonds, receive for said three cupons next to become due first mortgage construction bonds of said company at par, and for the four cupons past due second mortgage construction bonds at par, which bonds shall be in full payment of said cupons. After said road is finished to Grinnell, said cupons shall be delivered up to said company on the first day of September, 1863, provided said road is finished to Grinnell within the time limited, as aforesaid, and until that time said cupons shall be held by said Richard Irvin, as security collateral to said construction bonds, and to be delivered to the depositors respectively, in case said road is not finished to Grinnell by the first day of September, 1863; said option shall be decided by each party at
419 the time of signing these presents.

The said road shall be finished and in running order to Grinnell by the first day of September, 1863. If the road is not finished to Grinnell at that time, or if the interest of the income bonds issued for any class of cupons is not paid when it is due, then the said cupons of such class shall, at the option of the depositors, be returned to them respectively, and the said bondholders shall be at liberty to use all their legal remedies, by forecloseure or otherwise, for the collection of their cupons in the same manner as if said cupons had not been funded, or this arrangement agreed upon; and in such case the bonds so received by the bondholders for said cupons may still be held by them as collateral security for the payment of said cupons.

The said company, with all parties hereto, hereby agree that the earnings of said road from the first day of July, 1862, to the first day of January, 1864, after paying all ordinary and proper expenses incurred in operating and keeping in repair the said road, rolling stock,
420 and buildings during the time specified, and the interest due on income bonds issued for said cupons, shall be applied to the construction and completion of said road to Grinnell, and to no other purpose; and said company further agree that they will keep, or cause to be kept, correct and detailed accounts of all the income & expenditures of said road from July 1st, 1862, to January 1st, 1864, which shall in monthly statements, upon the application from time to time of any holder or holders of said bonds to the amount of $100,000, be exhibited to them at the principal office of the company in the city of New York.

In case of any attempt to foreclose any mortgage upon said road by

any bondholder legally authorized and not parties hereto, or any attempt by judgment creditors to sell said road or any of its property before the said first day of January, 1864, the said cupons shall retain their respective liens on the said road as they now exist.

It is understood and agreed that the company shall retain the first three cupons to become due on the bonds which any of the above-
421 named bondholders are to receive for their cupons as aforesaid, deducting the amount of the same from the price of the bonds.

This agreement and arrangement shall not be considered binding on the parties who shall subscribe the same until the signatures to the same represent more than one-half in amount of the said bonds of the first division, nor until the said company shall have executed the same, nor unless the same shall be consumated by the first day of October, 1862.

The legal expenses & disbursements incurred in making and perfecting this agreement shall be paid by the said company.

In witness whereof, the said Mississippi and Missouri Railroad Company have caused these presents to be signed by their treasurer and affixed hereto their corporate seal, and the other parties have hereto subscribed their names, this first day of July, 1862.

Endorsed: Filed March 5, 1866.

W. G. WOODWARD, *Clk*,
By J. BAUSMAN, *D'p'ty.*

422 On this day, to wit, the third day of April, A. D. 1866, came the defendant, the Mississippi and Missouri Railroad Company, by John P. Cook, its solicitor, and filed in said clerk's office a demurrer to plaintiffs' bill; which demurrer is in the words & figures following, to wit:

The State of Iowa, in circuit court United States for the district of Iowa.

THOMAS E. DURANT ET ALS.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany et als.

This defendant, the Mississippi and Missouri Railroad Company, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto.

And for cause of demurrer showeth, that it appears by the said complainants' said bill, that Edward W. Dunham, Thomas E. Walker, and Curtis B Raymond, therein named, are neesessary parties to the
423 said bill, inasmuch as it is therein stated that this defendant did, by certain conveyances made to the said Dunham, Walker, & Raymond, convey to them, by way of mortgage or deed of trust, the certain estate in the said bill particularly described, for the purpose of paying or securing certain debts of the defendant, which said conveyances, so made to said Dunham, Walker, & Raymond, are prior and paramount liens on the said railroad of said defendant.

But the said complainants have not made the said Dunham, Walker, and Raymond parties to said bill.

Wherefore, and for divers other good causes of demurrer, this defend-

ant demands the judgment of this honorable court, whether it shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays to be hence dismissed with its reasonable costs in this behalf expended.

The Mississippi & Missouri Railroad Company.

JOHN P. COOK,
Of Counsel for Defendant.

424 I, John P. Cook, of counsel for the said defendant, the Mississippi & Missouri Railroad Company, do hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

JNO. P. COOK,
Of Counsel for Def't.

STATE OF IOWA, *Scott County, ss:*

I, Ebenezer Cook, upon oath do say that I am the secretary of the Mississippi & Missouri Railroad Company; that I have read the foregoing demurrer and know the contents thereof; and that the same is not interposed for delay.

Witness my hand and the seal of said company.

[SEAL.] EBENEZER COOK.

Sworn to & subscribed by the said Ebenezer Cook, in my presence, and before me, this 22d day of March, A. D. 1866.

Witness my hand & notarial seal at Davenport, Iowa, this 22d day of March, 1866.

[SEAL.] D. B. SHELLEY,
Notary Public, Scott County, Iowa.

Endorsed: Filed April 2, 1866.

W. G. WOODWARD, *Clerk.*

425 On this day, to wit, the ninth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office their motion to dismiss the bill as to certain defendants & to amend the bill; which motion is in the words and figures following, to wit:

Circuit court of the United States, district of Iowa.

THOMAS C. DURANT & ALS. *vs.* THE MISSISSIPPI & MISSOURI RAILROAD COMPANY & ALS.	In chancery.—May term, 1866.

Now come the complainants, by John N. Rogers, their solicitor, & move the court for leave to dismiss their bill of complaint as to the defendants Horatio G. Angle, John F. Ely, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David W. Coates, and Elisha P. Reynolds, and so far as said bill affects the said defendants, but not as against the said Mississippi and Missouri Railroad Company; and also for leave to amend said bill by adding new parties defendant.

JOHN N. ROGERS,
Sol'r for Complainants.

Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

426 On this day, to wit, the 9th day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr.,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al.

On this 9th day of May, 1866, it being the second day of the May term, on motion of John N. Rogers, esq., solicitor for complainants, it is ordered that complainants have leave to dismiss their bill of complaint as to the following defendants thereto, to wit, Horatio G. Angle, John F. Tracy, C. R. Morse, Andrew Taylor, Thomas Leader, Mary J. McAninch, David W. Coates, and Elisha P. Reynolds, and so far as said bill affects said defendants, saving and reserving the same against the Mississippi and Missouri Railroad Company; and that the said bill be
427 and the same is hereby dismissed accordingly as to all said above-named defendants except as to said railroad company, but not as to said railroad company.

And it is further ordered that the said complainants have leave to amend their said bill by making new parties thereto.

And afterwards, to wit, on the same day, the said complainants come and file their amended bill by which they make new parties, to wit, Edward W. Dunham, Thomas E. Walker, and Franklin Haven, defendants.

And afterwards, to wit, on the same day, came the defendants Edward Dunham, Thomas E. Walker, and Franklin Haven; and the said Dunham, as trustee & mortgagee for certain bondholders of bonds issued by said railroad company, & secured by mortgages to said Dunham as trustee, files his answer and cross-bill herein; and the said Walker and Haven, as trustees & mortgagees for certain other bondholders, file their answer and cross-bill herein and the original bill and amendment thereto.

428 On the same day, to wit, the ninth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, and filed in said clerk's office an amendment to the bill; which amendment is in the words & figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

To the judges of the circuit court of the United States for the district of Iowa:

Thomas C. Durant, of Brooklyn, in the State of New York, and Jacob S. Wetmore and Robert B. Minturn, jr., of the city, county, and State of New York, by leave of the court first had & obtained, now here make and file this their amendment to their original bill of complaint, & on file and pending in this honorable court.

And thereupon your orators complain and say that your orators did, on or about the 5th day of February, A. D. 1866, exhibit their original bill of complaint in this honorable court against the Mississippi & Missouri Railroad Company, a corporation created by and existing under

and by virtue of the laws of the State of Iowa, Horatio G. Angle and John F. Ely, of Linn County, in said State of Iowa, and others,
429 thereby stating as therein particularly stated and alleged, and praying as therein particularly prayed.

And your orators further show that afterwards, to wit, on or about the second day of April, A. D. 1866, the said principal defendant, the Mississippi and Missouri Railroad Company, filed in this hon. court a demurrer to said original bill, alleging, as cause of such demurrer, that your orators had failed to make Edward W. Dunham & Thomas E. Walker parties defendant to said bill.

Which said demurrer your orators confess, and now here make the said Edward W. Dunham, the said Thomas E. Walker, and also Franklin Haven, and also Mark Howard, of Hartford, in the State of Conneticut, and John Webber, of the State of Pennsylvania, parties defendant to said bill; the said Dunham and Walker being citizens of the State of New Jersey, and the said Franklin Haven being a citizen of the State of Conneticut, and the said John Webber being a citizen of the State of Pennsylvania.

And your orators further show, by way of amendment, that your orators have lately discovered, as the fact is, that the said Thomas E.
430 Walker & Franklin Haven, as trustees of divers persons who hold bonds issued by the said Mississippi and Missouri Railroad Company, claim to hold a certain deed of trust or mortgage, executed by the said railroad company to secure said bonds, which mortgage is dated the eighth day of May, A. D. 1857, and covers the second division of said railroad, from Iowa City, in Johnson County, Iowa, to Council Bluffs, in Pottawattamie County, Iowa, and the said Walker and Haven claim that there is due and unpaid of the sums so secured by the said mortgage a sum of about four millions three hundred thousand dollars.

Your orators admit the existence of the said mortgage, as they have before admitted in their original bill in this case, and admit that it is prior in date and lien to the mortgage of your orators; but your orators are not advised of the amount due on the security of said mortgage to the various bondholders represented by the said defendants Walker and Haven, and require proof of such amount.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold bond issued by the said Missouri Railroad Company, claims to hold a certain deed of trust or mortgage executed by the said railroad company to secure said last-named bonds,
431 which said mortgage is dated the first day of July, A. D. 1855, and covers the first division of said railroad, from Davenport to Iowa City and Muscatine, in said State of Iowa, together with the rolling stock and other property belonging to said first division of said railroad; and the said Edward W. Dunham claims that his said last-mentioned mortgage is a prior lien, and has precedence over your orators' mortgage and lien on said first division, and that there is due to the holders of the bonds so secured the sum of one million of dollars, and a large amount of accrued interest on said sum.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold other bonds issued by the said Mississippi and Missouri Railroad Company, claims to hold a certain other deed of trust or mortgage executed by the said railroad company to secure said bonds, which mortgage is dated the first day of July, A. D. 1856, and is a second lien upon the said first division of said railroad, extending from Davenport to Iowa City and Muscatine, together with the rolling stock and other property appertaining to the said first

432 division of said railroad; and the said Edward W. Dunham claims that said last-mentioned mortgage is a prior lien and has precedence over your orators' mortgage and lien on said division, and that there is due to the holder of the bonds so secured the sum of four hundred thousand dollars, and a large amount of accrued interest on said sum.

Your orators further show that the said Edward W. Dunham, as trustee of divers persons who hold other bonds issued by the said Mississippi & Missouri Railroad Company, claims to hold a certain other deed of trust or mortgage executed by the said railroad company to secure said bonds, which mortgage is dated the first day of July, A. D. 1856, and is a first lien upon the Oskaloosa division of said railroad, extending from the city of Muscatine to Oskaloosa, in said State of Iowa, together with the rolling stock and other property appertaining to the said division of said railroad; and the said Edward W. Dunham claims that said last-mentioned mortgage is a prior lien and has precedence over your orators' mortgage and lien on said division, and that there is due to the holders of the bonds so secured the sum of five hundred and ninety thousand dollars, & a large amount of accrued interest on said sum.

433 Your orators admit the existence of the said three last-mentioned mortgages to the said Edward W. Dunham, as trustee, as they have heretofore admitted in their original bill in this case, and admit that the said three mortgages are prior in date & lien to the mortgage of your orators; but your orators are not advised of the amounts due upon the security of the said mortgages to the various bondholders represented by the said defendant Edward W. Dunham, and require proof as to such amounts.

Your orators further show that the said John Webber and Mark Howard, severally and respectively, have or claim to have a lien upon the said railroad and its property by virtue of certain judgments in their favor, on record in this hon. court, against the said Mississippi & Missouri Railroad Company, or in some other way, which said liens or claims, if any there be, are subsequent and inferior to the lien of the mortgage made to your orators as aforesaid and subject thereto.

Your orators further annex hereto a certified copy of the said mortgage to them, set out in their said original bill marked A, and pray that the same may be taken as a part of their bill of complaint herein.

434 To the end therefore that the said defendants may show cause, if any they have, why your orators should not have the relief prayed for in this and your orators' original bill of complaint, and that the said defendants may, respectively, full, true, direct, and perfect answers make to all and singular the matters aforesaid, according to the best of their knowledge, information, and belief, your orators hereby waiving the necessity of the answers of said defendants, or either of them, being under the oaths of said defendants, or either of them, and that as fully and particularly as if the matters & charges in this and the original bill of complaint were here again set forth, and the said defendants particularly interrogated thereto.

And that the said property, as described in your orators' original bill of complaint, may be sold as prayed in said original bill, and that from and after such sale the said defendants, and all and each of them, and all & every persons or person claiming by, through, or under them, subsequently to the filing of this bill, be forever barred & fore-

435 closed of and from all and every interest, estate, right, claim, or equity of redemption of, in, or to the property and premises so sold as aforesaid, and every part & parcel thereof.

And that your orators have such other and further relief in the premises as the nature of the case shall require, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said Edward W. Dunham, Thomas E. Walker, Franklin Haven, John Webber, & Mark Howard, thereby commanding them, & each and every of them, at a certain day & under a certain penalty therein to be inserted, personally to be & appear before your honors, in this honorable court, & then & there answer all & singular the premises, & to stand to, perform, and abide such order and decree therein as to your honors shall seem meet.

And, as in duty bound, your orators will ever pray, etc.

JOHN N. ROGERS,
Solicitor for Plaintiffs.

436 A.

This indenture of mortgage, made this tenth day of December, in the year of our Lord one thousand eight hundred and sixty-one, by and between the Mississippi and Missouri Railroad Company, a body corporate, duly organized under the laws of the State of Iowa, and domiciled in said State, of the first part, and Thomas C. Durant, of Brooklyn, Kings County, and Jacob S. Wetmore and Robert B. Minturn, jr., of the city, county, and State of New York, of the second part, witnesseth as follows:

Whereas the said parties of the first part, the Mississippi and Missouri Railroad Company, desiring to secure the payment of moneys by them now owing, for principal and interest, on account of the cost of constructing their railroad hitherto, and to borrow moneys for the further construction, and the completion and equipment of the same, do therefore, for the purposes aforesaid, propose to issue a series of mortgage bonds, to be denominated second mortgage construction bonds, to the amount of seven hundred thousand dollars, five hundred of which bonds shall be for the sum of five hundred dollars each, bearing
437 interest at the rate of seven per cent. per annum, payable semi-annually, on the first day of January and July in each year, and the principal reimbursable on the first day of January, A. D. 1882, and shall be in substance and form, as near as may be, like those heretofore issued by this company, and shall be secured by a mortgage or deed of trust covering the entire property and franchises of the company, together with all its lands now owned, or which may hereafter be acquired, by said company, which said mortgage shall be a third lien upon all that portion of the road lying between Davenport and Iowa City, & Davenport & Muscatine, and is a second lien on all that portion of the main trunk lying between Iowa City & Council Bluffs, and of the Oskaloosa branch, lying between Muscatine and Oskaloosa, as also upon all the lands of said company, as hereinafter specified:

Now, therefore, this indenture witnesseth that the said parties of the first part, for securing the payment of the sums of money mentioned in the said series of second mortgage construction bonds or obli-
438 gations, and the interest thereon, and also for and in consideration of the sum of one dollar in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and, by these presents, do

grant, bargain, sell, convey, and confirm, unto said parties of the second part, and to their survivors or survivor, and his or their successor or successors, who may be appointed or selected, in the manner and according to the conditions hereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, and neesessary for the uses & purposes of the road, now owned, or hereafter to be acquired, by said parties of the first part, constituting or belonging to the railroad of said parties of the first part, extending from Davenport, in the State of Iowa, to Muscatine, and to Council Bluffs, on the Missouri River, and also on that portion of their line of road extending from Muscatine to Oskaloosa, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, ap-
439 purtenant to the said railroad, and all the rolling stock and personal property of the said the Mississippi and Missouri Railroad Company, properly belonging to their road, & appertaining thereto, and all the franchises, rights, and priviledges appertaining to the same, now existing, or hereafter to be acquired.

Also all right, title, interest, claim, or demand which said parties of the first part now have, or shall hereafter acquire, in or to all public lands of the United States granted by an act of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State, by an act approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, with all the estate, right, title, and interest, property and posession, claim or demand whatever, at law or in equity, of the said parties of the first part, in and to the same, and each and every part and parcel thereof, excepting, saving, and reserving to the parties of the first part all lands now owned, or hereafter to be acquired by them, which may not be included in the said grant of public land from the United States, and may not be neesessary for the uses & purposes of said railroad, & the depots & right of way thereof;
440 to have and to hold all & singular the lands and premises hereby granted, or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, or the survivor of them, and their successors, appointed or elected in manner hereinafter provided, for the uses and purposes, and upon the trusts, terms, and conditions in this indenture set forth and declared.

Provided always, and these presents are upon the express condition, that if the said party of the first part shall well & truly pay, or cause to be paid, to the holders of the said second mortgage construction bonds, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore provided, according to the true intent and meaning of these presents, that then, and from thenceforth, this indenture and the estate hereby granted shall cease & determine; and all the right, title, & interest in any and all the property hereby conveyed to the parties of the second part, not then disposed of by them under the powers hereby conferred upon them, shall revert to and vest in the party of the first part.

441 This indenture further witnesseth that these presents and the said series of second mortgage construction bonds or obligations are made, executed, & delivered upon the terms, conditions, & agreements following, that is to say:

First. The said trustees, parties of the second part, or any of them or their successors, may at any time be superseded by any number of all the bondholders of said second mortgage construction bonds who are

the owners of a majority in amount of all the said series of bonds secured by this deed of trust, and who shall unite in the designation of such successor or successors; also that the number of such trustees may in like manner be reduced to two or one trustee, as the holders of a majority in amount of said series of bonds may elect.

Second. That the said Mississippi and Missouri Railroad Company, the party of the first part, and its successors, shall and will pay, or cause to be paid, all taxes, charges, rates, levies, & assessments imposed, assessed, or levied upon the premises, franchises, and property hereby mortgaged, conveyed, and assigned, or intended so to be; and
442 shall and will, at its own proper cost, expense, and charges, do or cause to be done all acts & things neesessary or proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid premises, property, & franchises hereby created, or intended so to be; & further, that the said Mississippi & Missouri Railroad Company, and its successors, shall not and will not, at any time hereafter, take, or in any way or manner use, interpose, or avail itself of any extension laws, stop laws, valuation laws, appraisment laws, or any other laws of said State of Iowa, now in force, or hereafter to be enacted and in force in said State, and which alter, affect, or impair, or which are designed, intended, or construed to alter, affect, or change, the rights and interests of said parties of the second part as herein declared, or which shall in any way impede or obstruct the mode or manner of realizing, perfecting, or enforcing the rights and interests of any of the holders or owners of said second mortgage construction bonds as herein provided, or which shall affect, change, or alter the time, place, mode, means, or manner of perfecting, enjoying, or enforcing any of such rights or interests, as the same are herein declared.

443 Third. That the said Mississippi and Missouri Railroad Company, the party of the first part hereto, shall and will well and truly pay the said sums of money in the said second mortgage construction bonds mentioned, together with the semi-annual interest due or to become due thereon, at the rate of seven per cent. per annum, at the times and in the manner and at the places specified therein; and further, said Mississippi and Missouri Railroad Company hereby covenants and agrees that in case it shall, for the space of thirty days, make default in the payment of the semi-annual interest due or to become due upon any or either of said second mortgage construction bonds, then, after the lapse of said thirty days, the whole principal sum mentioned in each and all of said second mortgage construction bonds shall forthwith become due and payable, and the lien or incumberance hereby created, for the security and payment thereof, may be at once enforced, anything in said second mortgage construction bonds, or in this indenture, to the contrary thereof notwithstanding; and that it shall and may be lawful, and the said parties of the second part, and the survivors
444 and survivor of them, and their successors or successor, are hereby expressly authorized and empowered, upon the request in writing of a majority of the amount of the holders of said second mortgage construction bonds, to enter into and upon, and to take actual posession of all & singular the railroad, premises, franchises, rights, property, real and personal, and effects, hereby granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be, as a security for the payment of said second mortgage construction bonds, and by themselves, or their or his agent or agents, take and collect & receive the tolls, earnings, income, and profits thereof, and of every part

thereof, or to be derived therefrom; and that they, the said parties of the second part, and the survivor and the survivors of them, and their and his successors and successor, upon the written request as above specified, shall and may proceed, and are hereby expressly authorized and empowered thereupon, but within such reasonable time as they may deem proper—not less than sixty days—and upon and after public notice by adver-
445 tisement of at least eight weeks, in one or more newspapers published in the cities of Davenport, Des Moines, and Iowa City, in the State of Iowa, and in the city of New York, in the State of New York, to proceed to sell at public auction in said city of Davenport, in the State of Iowa, to the highest bidder, as well all and singular the said railroad, rights, and franchises, as all other the property, real and personal, & premises hereby granted, conveyed, assigned, mortgaged, pledged, transferred, and set over, or intended so to be; and all benefit and equity of redemption whatsoever of the said Mississippi & Missouri Railroad Company, the said party of the first part hereto, of, in, and to the same, and every part and parcel thereof, together with the benefit of the franchise belonging thereto, or connected therewith; subject, however, to the prior liens or incumbrances of the hereinbefore recited several first and second mortgages upon the several divisions of said road, its lands, and other property whatsoever; and, as the attorney or attorneys of the said Mississippi & Missouri Railroad Company, the party of the first part hereto, for that purpose by these presents duly appointed and constituted the said parties of the second part, and the survivors & survivor of them, & their and his successor and suc-
446 cessors, shall have full power and authority to make, execute, & deliver to the purchaser or purchasers thereof, good, valid, and sufficient deed or deeds, conveyance or conveyances, assignments or transfers, in fee simple or otherwise, of said railroad, lands, tenements, and real estate, and of all and singular the said personal or other property, rights, and premises hereby granted, assigned, transferred, or conveyed as aforesaid; which sale, so to be made as aforesaid, and which deeds, conveyances, assignments, and transfers, so to be made and delivered as aforesaid, shall operate to convey, assign, transfer, and vest in said purchaser all the right, title, interest, & estate whatsoever, reversionary or otherwise, of the said Mississippi and Missouri Railroad Company, the party of the first part, of, in, and to the premises so sold, conveyed, assigned, or transferred; and which said sale, so to be made, shall be a complete and a perpetual bar, both at law & in equity, against the said Mississippi & Missouri Railroad Company, the party of the first part, its successors and assigns, and all persons or parties claiming by, from, or under it or them in any wise or manner whatsoever; and
447 that out of the moneys or proceeds arising either from said tolls, earnings, or receipts of said railroad and premises, or out of or from said sale so to be made as aforesaid, after first deducting the expenses, disbursem'ts, costs, charges, and counsel fees incurred in and about the conducting said sale, or the running and operating said road, as well all interest due and unpaid upon each and all of the first and second mortgages hereinbefore recited, as they are respectively entitled, under and by virtue of the seperate divisions upon which said several prior deeds of trust have their respective liens; that they, the said parties of the second part, and the survivors and survivor of them, their and his successors or successor, shall pay said second mortgage construction bonds, or so many as shall be then outstanding and unpaid, together with all arrears of interest then due or owing upon the same, rendering or paying over the surplus of all such moneys, if any there shall be, to the said party of the first part hereto, its successors or assigns.

And it is hereby mutually agreed, & these presents are upon this express condition, that on the payment of the principal and interest of said bonds, the estate hereby granted to the said party of the second part shall be void, and the right of the premises hereby conveyed shall
448 revert to and revert in the said parties of the first part in law and in fact without any acknowledgment of satisfaction, reconveyance, re-entry, or other act. And it is also further mutually agreed, that the said parties of the second part, his or their successor or successors in said trust and assigns, shall be entitled to receive proper compensation for every labor or service performed by his or their successor or successors in the discharge of their trust, in case they shall be compelled to take posession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that in case of the death, removal, as first above provided, for mental incapacity, or resignation of the said parties of the second part, or either or any of them, all his or their estate, right, interest, power, and control in the premises shall be divested, cease, and determine, and the said parties of the first part shall make appointments of all vacancies in the trustees on the nomination of the holders of the majority of the said second mortgage construction bonds, or, in the default so to do for thirty days, the holders of a majority of the said bonds may apply to the district court of the State of
449 Iowa, sitting in any county in the State, to appoint a new trustee or trustees to supply his or their place, and thereupon such new trustee or trustees shall become vested for the purposes aforesaid with all the rights and interest hereby conveyed to or vested in the said parties of the second part, without any further assurance or conveyance for the same, but if the same shall be neesessary, both or either of the parties hereto shall execute any neesessary releases or conveyances for that purpose; like proceedings shall be had to supersede, substitute, or reduce the number of trustees, when required by the holders of the majority of said second mortgage construction bonds.

In witness whereof, the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president and secretary, and the said party of the second part has set his hand and seal the day and year first above written.

L. S. SEAL OF MISSISSIPPI & MISSOURI RAILROAD COMPANY.

JOHN A. DIX, *President.*
H. PRICE, *Secretary.*
THOS. C. DURANT, *Trustee.* [SEAL.]
JACOB S. WETMORE, *Trustee.* [SEAL.]
R. B. MINTURN, JR. *Trustee.* [SEAL.]

450 STATE OF MARYLAND, *Baltimore City, to wit:*

Be it remembered that on this 20th day of December, A. D. 1861, before the undersigned, a notary public in & for the city and State aforesaid, personally appeared John A. Dix, to me personally known to be the identical person described in and who executed the foregoing instrument as president of the Mississippi & Missouri Railroad Company—the words in the eleventh line from the bottom line, "a resident in the city of New York" being first erased, and the words "and secretary" in the second line interlined—and acknowledged the execution thereof to be his voluntary act and deed for the uses and purposed therein mentioned.

L. SOULTON, NOTARIAL SEAL, BALTIMORE, MD.

In testimony whereof, I have hereunto set my hand and affixed my seal notarial on the day and year above written.

LOUIS SOULTON,
Notary Public.

STATE OF NEW YORK, *County of New York, ss:*

Be it remembered that on the ninth day of January, 1862, before
451 the undersigned, commissioner for the State of Iowa, personally appeared Thomas C. Durant, Jacob S. Wetmore, and R. B. Minturn, jr., to me personally known to be the identical persons whose names are subscribed to the foregoing instrument as trustees—the words in the eleventh line from the bottom line "a resident of the city of New York" being first erased, "and secretary" in the second line interlined—& severally acknowledged the execution thereof to be his voluntary act and deed for the purposes therein mentioned.

{ I. GARDINER, COMMISSIONER, SEAL. } In testimony whereof, I have hereunto affixed my hand and seal the day and year above written.

I. GARDINER,
Commissioner for the State of Iowa.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this 30th day of January, 1862, before the undersigned, John F. Dillon, judge of the seventh judicial district, and for said county and State, personally appeared H. Price, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as secretary, and acknowledged the execution
452 thereof to be his voluntary act and deed for the uses and purposes therein named—the words in the eleventh line from the bottom line "a resident in the city of New York" being first erased, "and secretary" in the second line interlined before signing.

JOHN F. DILLON,
Judge of the 7th Judicial District of said State,
Which district includes said Scott County, Iowa.

STATE OF IOWA, *Scott County, ss:*

I, James Thornington, recorder of Scott County, State aforesaid, do hereby certify that the foregoing is a full, true, perfect, and correct transcript of the records in my office in said county of an instrument duly recorded, entittled "Mississippi and Missouri Railroad Company mortgage to Thomas C. Durant and others; filed for record Feb'y 8th, 1862, at 11.45 a. m.—A. F. Mast, recorder, R. Sneetham, deputy—in book "U" of mortgages, on pages 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53."

In testimony whereof, I have hereunto set my hand this 15th day of February, 1866.

JAMES THORNINGTON,
Recorder, Scott County, Iowa.

[United States rev. stamp, 5 cents, cancelled.]

453 Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of July, A. D. 1866, came the defendant, the Mississippi and Missouri Railroad Company, by Cook and Drury, its solicitors, and filed in the said clerk's office its answer; which answer is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al. } In equity.

The seperate answer of the said Mississippi & Missouri Railroad Company to the complainants' bill exhibited in this case, & the amendment thereto.

This defendant, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof as this defendant is advised is material, says:

454 This defendant admits its existence as a corporation as set out in said bill, and it admits the grant of land by the United States to the State of Iowa, and by the State of Iowa to this defendant, to aid in the construction of the main line of its road from Davenport to Council Bluffs, and that this defendant did accept such grant & by virtue thereof became entitled to and accepted large quantities of land.

And this defendant admits that on or about the tenth day of December, 1861, it did make, execute, and deliver unto the complainants the indenture of mortgage set out in said bill of complaint for the uses and purposes mentioned in said mortgage, and particularly to secure certain bonds issued by this defendant to borrow money to aid in constructing its road and to pay indebtedness of said company; and admits that the principal of said bonds is payable on the first day of January, 1882, and that the interest, payable thereon, is at the rate of seven per cent per annum, payable semi-annually; and this defendant admits that said mortgage is a third lien on the first division of said road and a second lien on the other two divisions of said road; and this defendant

455 avers that the first and second mortgagees on said first division, and the first mortgagees on said second and third (Oskaloosa) divisions and land grant have superior and paramount liens on said road.

And this defendant admits that a failure to pay said interest at maturity made the whole, principal and interest, due and payable, and that the said plaintiffs, as trustees, may thereupon sell under said mortgage or foreclose the same in the courts of said State of Iowa, provided a majority, in amount, of said bondholders should request in writing that said property be sold.

This defendant admits the recording of said mortgage in various counties, as in said bill alleged.

This defendant admits the issuing of certain bonds as specified & recited in said mortgage, the number and exact amount of which this defendant fully sets out in an exhibit hereto annexed, marked Exhibit "A," and made a part of this answer; in which exhibit this defendant has calculated the amount of unpaid interest up to the 8th day of May, 1866.

This defendant admits that it has failed to pay the interest on said bonds, and avers the truth to be that it has been unable to do so

456 from the earnings of said road.

This defendant admits the demand of said bondholders for their unpaid interest, and that this defendant did not pay the same.

This defendant, further answering, says that it is true that it has not applied all the earnings of said road to the payment of interest on bonds issued by this defendant, but avers that it has applied such earnings to the payment of interest, except such an amount as, in the opinions of the officers of said road, was neesessary for the payment of current expenses, and such repairs and finishing of said road as were deemed neesessary for the profit and interest of said corporation and its creditors.

This defendant admits that it is in arrears for interest on said bonds to an amount shown in said Exhibit "A."

This defendant admits that a failure to pay said interest accumulates the gross amount due, but cannot admit that complainants are imperilled thereby; and defendant admits that said corporation is insolvent.

Further answering the matters set forth in the amendment to
457 the original bill, this respondent admits that said Thomas E. Walker and Franklin Haven, as trustees for certain bondholders, hold a mortgage to secure said bonds, which mortgage bears date as in said bill stated, and was executed by this respondent upon the second division of its road from Iowa City west to Council Bluffs, as stated in said bill, and that there is due on said last-named mortgage about the amount claimed by them, as trustees, and that said mortgage is prior and senior in its lien on said property.

Further answering, this defendant admits that said Edward W. Dunham is the trustee in three several mortgages as set for thin said bill; that they are all prior liens to complainants' lien, & extend and cover the whole road and its property, except the second division from Iowa City to Council Bluffs; and that there is a large amount due on said mortgages.

And this respondent, having fully answered, prays, &c.

{SEAL OF THE MISSISSIPPI & MO. R. R. CO.} Mississippi & Missouri R. R. Comp'y, by its secretary, as witness his hand & the seal of said corporation, this 30th day of April, A. D. 1866.

EBENEZER COOK,
Secretary of the Miss. & Miss. R. R. Co.

458 STATE OF IOWA, *Scott County, ss:*

I, Ebenezer Cook, being duly sworn, upon oath say that I am the secretary of the Mississippi and Missouri Railroad Company, the corporation defendant in the above-entitled cause; that I have read the foregoing answer; and that the statements therein made are true to the best of my knowledge, information, and belief.

EBENEZER COOK.

STATE OF IOWA, *Scott County, ss:*

Sworn to and subscribed before me by the said Ebenezer Cook, in my presence, this first day of May, A. D. 1866.

Witness my hand & notarial seal.

[SEAL.]

J. LEWIS DREW,
Notary Public, Scott Co., Iowa.

"EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the second mortgage construction bonds of the Mississippi & Missouri Railroad Company.*

459

Principal		692,000 00
Scrip convertible into said bonds	2,211 85	
Interest on do., from July 1, 1862, @ 6%	511 49	
		2,723 34

Past due cupons of July, 1864, & Jan'y, 1865...	240 00	
Int. on do., from Jan'y 1, 1865, @ 6 °|₀.....	19 60	
		259 60
Int. on principal due July 1, 1865.....	24,220 00	
Int. on last am't from July 1, 1865, @ 6°|₀	1,141 27	
		25,361 27
Int. on principal due Jan'y 1, 1866.....	24,220 00	
Int. on last am't from Jan'y 1, 1866, @ 6 °|₀....	414 67	
		24,634 67
Principal.....	692,000 00	
Interest.....	52,978 88	
		$744,978 88

Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

460 On the same day, to wit, the ninth day of May, A. D. 1866, came Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office an answer to complainants' bill and amendment; which answer is in the words and figures following, to wit:

The State and district of Iowa, in the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY, Edward W. Dunham, et al.

} In equity.—To May term, 1866.

The seperate answer of the said Edward W. Dunham to the complainants' original bill and the amendment thereto.

This respondent, reserving all benefit and advantage of exception which may be taken to the manny errors and other imperfections in said complainants' bill and amendment contained, for answer thereto, or such part thereof as this respondent is advised it is material for him to answer, saith—

That this respondent admits the creation and existence of the said corporation known as the Mississippi & Missouri Railroad Com-
461 pany as set out in said bill, and he admits the grant of land by the United States to the State of Iowa, and by said State to said railroad company, and the acceptance of said grant by said company.

That this respondent admits the execution of said mortgage, dated the tenth day of December, 1861, from the said railroad company to the complainants, as set out in said bill of complaint, made for the uses and purposes mentioned in said mortgage; that said bonds are payable on the first day of January, 1882, and draw interest at the rate of seven per cent. per annum, payable semi-annually; that said mortgage of complainants is a third lien on the first division of said road, and a second lien on the other two divisions of said road.

And this respondent avers that the mortgages made to him, as trustee, by the said railroad company, are prior in date and lien upon the first division of said railroad, extending from Davenport to Iowa City and Muscatine, and upon the Oskaloosa division of said railroad, extending from Muscatine to Oskaloosa.

That this respondent admits that complainants' mortgage is due,
462 and that they have the right to foreclose the same, subject to the rights of this respondent, but this respondent is not advised of the amounts due to the complainants as trustees for the bondholders.

And as to the matters set forth in the amendment to the original bill, this respondent admits and claims that he holds, as trustee, for divers persons owning bonds issued by said railroad company, two several mortgages on the first division of said railroad, extending from Davenport to Iowa City and Muscatine, and on the real estate, rolling stock, and other property thereto appurtenant, and one other mortgage on the Oskaloosa division of said railroad, extending from Muscatine to Oskaloosa, and on the real estate, rolling stock, and other property thereto appurtenant; and that said three mortgages are prior liens to that of said complainants and the liens of the other defendants to said bill; and that the said three mortgages to this respondent are now due and subject to forecloseure.

And further answering, this respondent admits the existence of the mortgage to Thomas E. Walker & Franklin Haven, substituted
463 as trusteee for Curtis B. Raymond, but the said mortgage does not affect the interest of this respondent, and he is advised that it is not neesessary for him to respond further to the allegations in said bill in that behalf.

Wherefore, this respondent having fully answered, he asks that his rights and interests be protected by this hon. court, and that he be dismissed hence, &c.

EDWARD W. DUNHAM.

JNO. P. COOK, *Solicitor for Respondent.*

Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the ninth day of May, A. D. 1866, came the defendants Thomas E. Walker and Franklin Haven, by John P. Cook, their solicitor, and filed in said clerk's office their answer to the bill and amendment; which answer is in the words and figures following, to wit:

The State & district of Iowa, in the circuit court of the United States.

THOMAS C. DURANT ET ALS. *vs.* 464 THE MISSISSIPPI AND MISSOURI RAILroad Company, Thomas E. Walker, Franklin Haven, et als.	In equity.—To May term, 1866.

The seperate answer of Thomas E. Walker and Franklin Haven to the complainants' original bill and the amendment thereto.

These respondents, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof as these respondents are advised is material to answer, say—

These respondents admit the creation and existence of the said corporation known as the Mississippi and Missouri Railroad Company, as set out in said bill, and they admit the grant of land by the United States to the State of Iowa, and by the State of Iowa to the said rail-

road company, to aid in the construction of the main line of said road from Davenport to Council Bluffs, in Iowa; and that said com-
465 pany accepted the said grant, and by virtue thereof became entitled to and accepted a large quantity of land.

And respondents admit the execution of said mortgage of 10th December, 1861, by said railroad company to complainants, as set out in said bill of complaint, and for the uses and purposes mentioned in said mortgage; that said bonds are payable first January, 1882, and draw interest at the rate of seven per cent. per annum, payable semi-annually; and that said mortgage is a third lien on the first division of said railroad, and a second lien on the other two divisions of said road, and respondents aver that their mortgage is prior in date and lien on the said second division of said railroad.

Respondents admit that complainants' mortgage is due, and that they have the right to foreclose the same, subject to the rights of these respondents; respondents are not advised of the amount due to complainants as trustees for the bondholders.

And as to the matters set forth in the amendment to the original
466 bill, these respondents admit & claim that they hold as trustees for the bondholders a certain mortgage upon the second division of said road, & upon the lands so granted to said railroad company by the acts of Congress and the legislature of Iowa, and that said mortgage is a prior lien to the claim of said complainants and the other defendants to said bill, and that the mortgage to these respondents is now due and subject to foreclosure.

Further answering, these respondents admit the existence of the three several mortgages to the said defendant Edward W. Dunham, but the said mortgages do not affect the interest of these respondents, and they are advised that it is not necessary for them to respond further to the allegations in said bill in that behalf.

Wherefore these respondents, having fully answered, ask that their rights and interests be protected, and that be dismissed hence, &c.

THOMAS E. WALKER.
FRANKLIN HAVEN.

JOHN P. COOK,
Solicitor for Respondents.

Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

467 On the same day, to wit, on the ninth day of May, A. D. 1866, came the defendant Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office his cross-bill; which cross-bill is in the words and figures following, to wit:

THE STATE AND DISTRICT COURT OF IOWA, *ss:*

In the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, et al. } In chancery.

The cross-bill of Edward W. Dunham, one of the defendants to the bill of complaint exhibited in the above-entitled cause.

To the honorable the judges of the circuit court of the United States within and for the district of Iowa, sitting in equity:

Edward W. Dunham, of Jersey City, and a citizen of the State of New Jersey, brings this his cross-bill against the Mississippi and
468 Missouri Railroad Company, a company duly organized under and by virtue of the laws of the State of Iowa, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, citizens of the State of New York, and the complainants in the bill of complaint to which this bill is a cross-bill, Mark Howard, of Hartford, a citizen of the State of Conneticut, and John Webber, of Philadelphia, and a citizen of the State of Pensylvania.

And thereupon your orator, Edward W. Dunham, complains and says—

That heretofore, to wit, on or about the fifth day of February, A. D. 1866, the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, filed in the honorable court their certain bill of complaint against the said Mississippi and Missouri Railroad Company and others, as defendants, praying the forecloseure of a certain mortgage executed to the said complainants by the said railroad company, and setting forth that your orator in this cross-bill, as trustee for divers owners of bonds issued by the said railroad company, three
469 certain mortgages or deeds of trust upon parts or divisions of the railroad of the said company.

And thereafter, to wit, on the 27th day of April, A. D. 1866, the said complainants filed in this honorable court an amendment to their said bill, wherein and whereby they made your orator also a party defendant to their said bill of complaint, and prayed as before in their original bill for the forecloseure of their said mortgage.

And your orator, complaining, shows that the said Mississippi and Missouri Railroad Company is a corporation organized under chapter 43 of the code of Iowa, enacted February 5th, A. D. 1851, for the purpose of building, maintaining, and operating a railroad from the eastern line of said State of Iowa, at or near Davenport, in the county of Scott, to the western line of said State, at or near Council Bluffs, in the county of Pottawattamie, with power to construct, maintain, and use a branch railroad from the main line of said road, southwesterly, by the way of Muscatine to the southern or western boundry of said State, or both, and with full power to borrow money for the purpose of building,
470 maintaining, and operating such railroads, and to execute mortgages on such roads and the other property and franchises of said company to secure the payment of the money borrowed.

And your orator further shows that the said railroad company has accordingly constructed a railroad extending from the eastern boundry of the State of Iowa, at Davenport aforesaid, westwardly to Kellogg, in the county of Jasper, in said State, a distance of one hundred and thirty-five miles, or thereabouts, and also a branch of the said railroad, connecting with said main line at Wilton, in the county of Muscatine, & thence extending southwestwardly, by way of the city of Muscatine, to Washington, in the county of Washington in said State, a distance of fifty-three miles, or thereabouts; and that the said company is now in the posession of and operating said railroad, and in posession and use of the depot grounds, stations, and buildings thereto appurtenant, and is also the owner and in posession and use of a large number of locomotive engines, tenders, freight cars, passenger cars, and other rolling stock, as well as of machine shops, steam-engines, machinery,
471 tools, and a large quantity of materials, such as iron, wood,

paints, &c., procured for the purpose of operating said road and repairing the road-bed and rolling stock thereof.

And your orator shows that the said railroads were built in three divisions, known and described as follows, to wit:

The first division, commencing at the eastern boundry of the said State of Iowa, at Davenport, and thence extending westwardly to Iowa City, in Johnson County, and also including the branch railroad commencing at the main line at Wilton, in Muscatine County, and thence extending southwardly to the city of Muscatine aforesaid.

The second division, commencing at Iowa City aforesaid, and thence extending westwardly to the termination of said road.

The third or Oskaloosa division, commencing at the city of Muscatine aforesaid, and thence extending southwestwardly to Washington, in Washington County aforesaid.

And your orator further shows unto your honors that on the first day of July, A. D. 1855, the said Mississippi and Missouri Railroad
472 Company did make, execute, and deliver unto your orator as trustee a certain indenture of mortgage under the corporate seal of the said company, and signed in behalf of said company by its president and treasurer thereto duly authorized, and dated on the day last aforesaid, in and by which mortgage it was recited that the said Mississippi & Missouri Railroad Company was then engaged in constructing the division of its railroad extending from Davenport to Iowa City and Muscatine, a distance of sixty-seven miles, and for that purpose was desirous of raising money by the issue of bonds to the amount of one million of dollars, to be applied to the construction and completion of the said railroad from the city of Davenport to the cities of Iowa and Muscatine and putting the same into operation; and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1875, with the option on the part of the
473 owner of the bond of converting the same into the stock of the company at any time previous to the first day of July, 1860; such bonds to be on an equality so far as regards security for the payment thereof by said indenture, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate, signed by your orator, the said trustee, and said bond and certificate to be in a form fully set forth in the said indenture of mortgage.

For a full and complete recital, as well as for the form of said bond and certificates, your orator refers to a true copy of said indenture of mortgage, which he attaches to this his cross-bill, and prays that said copy may be made a part hereof; said copy is marked "Exhibit A."

And thereupon the said Mississippi and Missouri Railroad Company, in and by the said indenture of mortgage so dated on the first day of July, A. D. 1855, as aforesaid, in order to secure the payment of said bonds & interest, and in consideration of the sum of one dollar, to the said company in hand paid by your orator at the ensealing and
474 delivery of said indenture, did grant, bargain, sell, transfer, and convey to your orator and his successors in trust the said railroad then constructed or to be constructed, together with all & singular the railway's land procured or occupied for right of way, together with bridges, fences, priviledges, rights, and real estate owned by said company, or thereafter to be owned by them, between the city of Davenport and the cities of Iowa and Muscatine, and all the tolls, income, issues, &

profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which should be procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road then constructed or to be constructed, including all the property of the company on said division, real & personal, and all the rights, credits, & franchises of the company in said division of rail-road.

475 To have and to hold the said premises, and every part thereof, with the appurtenances, unto your orator and his successor as trustee in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds and provisions of the charter of said company & the amendments thereto, under which said company derives its powers, and subject to the posession, control, and management of the directors of said company so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of said indenture of mortgage.

And your orator further shows that in and by the said indenture it is covenanted and provided that in case the said Mississippi and Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same might become due and payable according to the tenor thereof when demanded, then, after sixty days from such default upon

476 the request of the holder of any such bond, your orator and his successors in said trust might and should take actual posession of said railroad, and of all and singular the property and effects mortgaged, and through the agency of the persons he or they might from time to time appoint should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs; or your orator and his successors in trust might, at his or their discretion, or on the written request of the holders of, at least, one-half of the bonds then unpaid should cause the said premises, or so much thereof as shall be neesessary to pay and discharge the principal and interest of all such of said bonds as might then be unpaid as aforesaid, to be sold at public auction, as particularly specified and stipulated in said indenture, and apply the proceeds of such sale, after deducting the cost and expenses thereof, and of managing such property, to the payment of said principal and interest, or so much as may be neesessary therefor.

But upon this condition, that on payment of the principal &

477 interest of said bonds, the estate in said indenture granted to your orator should be void. All of which, by refrence to said indenture of mortgage, to which your orator for greater certainty craves leave to refer, and a true copy of which is hereto attached as "Exhibit A" as aforesaid, will fully and at large appear.

And your orator further shows that he accepted the trust so conferred in said indenture; that the said indenture of mortgage was duly acknowledged, and that the same was duly recorded in all the counties through which the said division of said railroad runs, and in which the property thereby mortgaged is situated, to wit, the counties of Scott, Cedar, Johnson, and Muscatine.

And your orator further shows and alleges that said railroad company,

in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purpose therein set forth, did execute and deliver under its corporate seal and the signature of its president and treasurer a large amount of said bonds or obligations now outstanding and unpaid, to wit, an amount in the aggregate of one million of dollars in bonds of one thousand dollars each, dated the said first day of July, 1855, known as "first mortgage bonds," secured on the first division of said company's railroad and its appurtenances, by which said bonds the said company bound itself, and agreed to pay to holders or bearers of said bonds the sums therein expressed respectively, on the first day of July, 1875, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each and every year, until the maturity of said bonds.

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The said bonds to the amount aforesaid are now held and owned by divers persons who have purchased the same for value, and are valid and subsisting obligations against the said company to the full amounts therein expressed, with the interest accrued and unpaid thereon.

And your orator further shows and alleges that the conditions of the said indenture of mortgage have been broken, and that the said railroad company is in default; that is to say, the said Mississippi and Missouri Railroad Company has refused, neglected, and failed to pay, or cause to be paid, to the holders of said bonds, or any of them, the semi-annual interest due and payable thereon according to the tenor of said bonds at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

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And your orator shows that there is now due and unpaid a large amount of interest upon said bonds, to wit, the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of July, 1865; also the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of January, 1866; also a large amount of interest which became due and payable before the two days last aforesaid, of the exact amount of which your orator is not now advised, further than that he charges and shows that certain interest on said bonds which became due on and prior to the first day of January, A. D. 1864, and amounting to the sum of two hundred and fourteen thousand dollars, remained and remains unpaid; and that for the cupons representing such unpaid interest, the holders thereof did conditionally agree under an arrangement with said company, that they would take certain bonds, known as "income bonds," only on condition that the interest accruing thereon should be promptly paid, & also the principal when the same should become due; and to insure said payment, and not loose nor release their lien on said road under said mortgage, the said holders of said unpaid interest cupons upon said bonds did conditionally deposit said unpaid interest cupons amounting to $214,000, or thereabouts, as aforesaid, with a trustee, reserving and retaining the right, in case said income bonds and the interest thereon at seven per cent. per annum were not promptly paid by said company, to at any time surrender said income bonds to the said trustee holding said cupons in trust as aforesaid, & to receive again their unpaid interest cupons as aforesaid, and that the said company has failed to pay the semi-annual interest on said income bonds due on the first day of July, 1865, and since that date, and that the owners of said unpaid interest cupons and holders of said income bonds elect to return said bonds, and receive their cupons

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481 from said trustee, and now ask that said unpaid coupons, and all of them, together with interest thereon, since the first January, 1865, be received and merged in the decree of this court as hereinafter prayed, together with all other unpaid interest, and interest thereon.

And your orator further says that there are other sums due sundry holders of said bonds for unpaid interest, of the exact amount of which your orator is not now advised.

Wherefore, and in pursuance of the provisions of the said mortgage and the laws of the State of Iowa, your orator, as trustee for the holders of said bonds as aforesaid, now claims in behalf of said bondholders that the whole of the principal sum mentioned in each and all of said bonds, and secured by said indenture of mortgage, has become and is due and payable with interest thereon at seven per cent. to date, and that your orator is now entitled to a forecloseure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon so secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders of more than one-half in amount of said bonds to proceed to enforce
482 and foreclose said mortgage in this action.

And your orator further complains and says that heretofore, to wit, on the first day of July, 1856, the said Mississippi and Missouri Railroad Company did make, execute, and deliver unto your orator, as trustee, a certain other indenture of mortgage under the corporate seal of said company, and signed on behalf of said company by its president and treasurer thereto duly authorized, and dated the day last aforesaid, in and by which indenture it was recited that the said Mississippi and Missouri Railroad Company had then constructed and finished the division of said road extending from Davenport to Iowa City and the city of Muscatine, a distance of sixty-seven miles, and for the purpose of raising money to pay off the contractors, and to purchase additional equipments for said division of said road, was desirous of raising money by the issue of a series of second mortgage bonds to the amount of four hundred thousand dollars to be applied to that purpose, and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars each, bearing interest at the rate
483 of eight per cent. per annum, payable semi-annually on the first days of January and July in each year, and the principal reimbursable on the first day of July, 1876, each bond to be on an equality so far as regards security for the payment thereof by said indenture, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by your orator, the bond and certificate to be in a form fully set forth in said indenture of mortgage.

For a full and complete recital, and for the form of said bonds and certificate, your orator craves leave to refer to a true copy of said indenture of mortgage which he attaches to this his cross-bill, and prays that said copy may be taken as a part hereof.

And thereupon the said Mississippi and Missouri Railroad Company, in and by the said indenture of mortgage so dated, on the first day of July, 1856, as aforesaid, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to the said company at the sealing and delivery of said indenture, in hand paid by your orator, did grant, bargain, sell, transfer, and convey to your
484 orator, and his successors, in trust, the said railroad, then constructed, and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with

bridges, fences, priviledges, and rights owned by said company, or which should thereafter be owned by it between the city of Davenport and the cities of Iowa City and Muscatine, in the State of Iowa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which should be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight cars, shops, tools, and machinery, procured for or connected with the division of road then constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad, subject to a previous mortgage of one million of dollars made between the same parties on the first day of July, 1855, being the same mortgage in this cross-bill before set out and described, and a copy of which is hereto annexed as Exhibit "A."

To have and to hold the said premises and every part thereof, with
485 the appurtenances, unto your orator, his successors in said office, as trustee in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, then to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its power, and subject to the posession, control, & management of the directors of said company so long as said company should well & truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of said indenture of mortgage.

And your orator further shows, that in and by said indenture, it is covenanted and provided that in case the said Mississippi and Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same might become due and payable according to the tenor thereof, when demanded, then, after sixty days from such default, upon the request of the owner of any such bond, your orator might and
486 should take actual posession of said railroad, and of all and singular the property and effects mortgaged, and through the agency of persons by him from time to time appointed should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs, to your orators and his successors; at his or their discretion, might, or on the written request of the holders of at least one-half of the bonds then unpaid, should cause the said premises, or so much thereof as should be neesessary to pay and discharge the principal and interest of all such of said bonds as might be unpaid as aforesaid, to be sold at public auction in manner as particularly specified and stipulated in said indenture; and should, after deducting the costs and expenses of such sale, apply so much of the proceeds thereof as might be neesessary to the payment of said principal and interest on said bonds, and restore the residue to said company.

But upon condition that on payment of the principal and interest of said bonds the estate in said indenture, granted to your orator, should be void.

487 All of which, by reference to said indenture of mortgage, to which your orator for greater certainty craves leave to refer, and a true copy whereof is hereto attached as aforesaid, marked "Exhibit B," will more fully and at large appear.

And your orator further shows, that he accepted the trust conferred

in said indenture as aforesaid; that the said indenture of mortgage was duly acknowledged, and that the same was duly recorded in all the counties of said State of Iowa, through which the said division of said railroad runs, and in which the property thereby mortgaged is situated, to wit, the counties of Scott, Cedar, Johnson, and Muscatine.

And your orator further shows and alleges that the said railroad company, in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purpose therein set forth, did execute and issue, under its corporate seal and the signature of its president and treasurer, a large amount of such bonds or obligations, now outstanding and unpaid, to wit, an amount, in the aggregate, of four hundred thousand dollars, in bonds of one thousand dollars each,
488 dated the said first day of July, 1856, known as "second mortgage sinking fund bonds," secured on the first division of said company's railroad and its appurtenances, by which said bonds the said company bound itself and agreed to pay to bearer or holders of said bonds the sums of money therein expressed, respectively, on the first day of July, 1876, and also interest thereon at the rate of eight per cent. per annum, payable semi-annually, on the first day of each January and July ensuing the date thereof, until the said principal sum should be paid.

And the said bonds, to the amount aforesaid, are now held & owned by divers persons who have purchased the same for value, and are valid & subsisting obligations against the company for the full amounts therein expressed, with the interest accrued and unpaid thereon.

And your orator further shows and alleges, that the conditions of the said indenture of mortgage have been broken, and that the said railroad company is in default, that is to say, the said Mississippi and Missouri Railroad Company has failed, neglected, and refused to pay or caused to be paid to the holders of said bonds, or to any of them, the
489 semi-annual interest due and payable thereon, according to the tenor of said bonds, at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

And your orator shows, that there is now due and unpaid a large amount of interest upon said bonds, to wit:

The semi-annual interest on the whole of said bonds, which, by the terms thereof, should have been paid on the first day of July, A. D. 1865; also the semi-annual interest on the whole of said bonds, which, by the terms thereof, should have been paid on the first day of January, A. D. 1866.

Also, further sums due to holders of said bonds, or some of them, for interest accrued before said two last-mentioned days, of the exact amount of which your orator is not now advised.

Wherefore and in pursuance of the provisions of the said indenture of mortgage, and the land of the State of Iowa, your orator, as trustee for the holders of said bonds, as aforesaid, now claims on behalf of said bondholders, that the whole of the principal sum mentioned in each and all of said bonds, and secured by said indenture of mortgage,
490 has become and is due and payable, with interest thereon, at eight per cent. per annum to date, and that your orator is now entitled to a foreclosure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon, as secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders of

more than one-half in amount of said bonds to proceed to enforce and foreclose said mortgage in this action.

And your orator further complains and says: That on the first day of July, A. D. 1856, the said Mississippi and Missouri Railroad Company did make, execute, and deliver unto your orator as trustee a certain other indenture of mortgage under the corporate seal of the said company, and signed in behalf of said company by its president and treasurer thereof duly authorized; in and by which said indenture it was recited that the said Mississippi and Missouri Railroad Company was then engaged in constructing the division of said road, extending from the city of Muscatine to Oskaloosa, a distance of ninety-five miles, and for that purpose was desirous of raising money by the issue of
491 bonds to the amount of one million four hundred and twenty-five thousand dollars, to be applied to the construction and completion of the said railroad from the city of Muscatine to Oskaloosa and putting the same into operation, and in order to secure the payment of the money borrowed did propose to execute bonds for the sum of one thousand dollars, each bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1876; with the option on the part of the owner of the bond of converting the same into the stock of the company at any time previous to the first day of July, 1861; such bonds to be on an equality so far as regards security for the payment thereof by said indenture, notwithstanding the same might be issued at different times; each of said bonds being authenticated by a certificate signed by your orator, the said trustee, and said bond and certificate to be in a form fully set forth in the said indenture of mortgage.

For a full and complete as well as for the form of said bonds and certificate, your orator craves leave to refer to a true copy of said
492 indenture of mortgage which he attaches to this his cross-bill and prays that copy may be made a part hereof; said copy is marked "Exhibit C."

And thereupon the said Mississippi and Missouri Railroad Company, in and by the said indenture of mortgage so dated on the first day of July, 1856, as aforesaid, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to said company at the sealing and delivery of said indenture in hand paid by your orator, did grant, bargain, sell, transfer, and convey to your orator and his successors in the trust thereby created the said railroad constructed, and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, priviledges & rights owned by said company, or which should be thereafter owned by it, between the city of Muscatine and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same and all the lands used and occupied for depots and stations, with all buildings standing thereon, or which should be procurred therefor, together with all the locomotive engines and tenders, passenger cars & freight cars,
493 shops, tools, and machinery procured for and connected with the division of ninety-five miles of road constructed and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad.

To have and to hold the said premises and every part thereof with the appurtenances unto your orator, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds, or any of them, about to be issued by

the said company as aforesaid, subject to all the terms and stipulations of the said bonds and the provisions of the charter of said company, and the amendments thereto under which said company derives its powers and subject to the posession, controll, and management of the directors of said company, so long as said company should well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of said indenture of mortgage.

And your orator further shows that in and by the said indenture it is covenanted and provided that in case the said Mississippi and
494 Missouri Railroad Company should fail to pay the principal, or any part thereof, or any of the interest, or any of the said bonds, at any time when the same might become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, your orator and his successors in said trust might and should take actual posession of said railroad and of all and singular the property and effects mortgaged, and, through the agency of the persons he or they might from time to time appoint, should receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under said mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said trustee, your orator, and his successors in said trust, at his or their discretion, or on the written request of the holders of at least one-half of the bonds then unpaid, should cause the said premises, or so much thereof as should be neesessary to pay and discharge the principal and interest of all such of said bonds as might then be unpaid as aforesaid, to be sold at public auction, as par-
495 ticularly stipulated and specified in said indenture, and after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as might be neesessary to the payment of said principal and interest on said bonds, and should restore the residue thereof to said company, but upon the condition that on payment on the principal and interest of said bonds the estate in said indenture granted to your orator should be void.

All of which by reference to said indenture of mortgage, to which your orator for greater certainty craves leave to refer, and a true copy of which is hereto attached as "Exhibit C," as aforesaid, will fully and at large appear.

And your orator further shows that he accepted the trust so conferred in said indenture; that the said indenture of mortgage was duly acknowledged; and that the same was duly recorded in all the counties in said State of Iowa, through which the said division of said railroad runs and in which the property mortgaged is situated.

496 And your orator further shows and alleges that the said railroad company, in pursuance of its desire and intention to borrow money as recited in said indenture of mortgage, and for the purposes therein set forth, did execute and issue under its corporate seal and the signatures of its president and treasurer a large amount of such bonds, or obligations, which are now outstanding and unpaid, to wit, an amount in the aggregate of five hundred and ninety thousand [thousand] dollars in bonds of one thousand dollars each, dated the said first day of July, 1856, known as Oskaloosa division bonds, secured on the said Oskaloosa division of said company's railroad and its appurtenances, by which said bonds the said company bound itself and agreed to pay to holders or bearers of said bonds the sums therein expressed respectively on the first day of July, 1876, and also interest thereon at the rate of seven per cent. per

annum, semi-annually, on the first day of each January and July ensuing the date thereof, until the said principal sum should be paid.

The said bonds to the amount aforesaid are now held and owned
497 by divers persons who have purchased the same for value, and are valid & subsisting obligations against the said company to the full amounts therein expressed, with the interest accrued and unpaid thereon.

The said company proceeded with the construction of the said Oskaloosa division of its said railroad, but that it has as yet completed and is now operating the said division only so far as Washington, in the county of Washington, in said State of Iowa.

And your orator further shows and alleges that the conditions of the said indenture of mortgage have been broken, and that the said railroad company is in default, that is to say: the said Mississippi and Missouri Railroad Company has refused, neglected, and failed to pay or cause to be paid to the holders of said bonds, or to any of them, the semi-annual interest due thereon, according to the tenor thereof at the times specified therein, although thereto requested and demanded by the holders of said bonds, or a large number of them, according to the provisions of the said indenture of mortgage.

498 And your orator shows that there is now due and unpaid a large amount of interest upon said bonds, to wit:

The semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of July, 1865.

Also the semi-annual interest on the whole of said bonds which, by the terms thereof, should have been paid on the first day of January, 1866.

Also a large amount of interest which became due and payable before the two days last aforesaid, of the exact amount of which your orator is not at present fully advised, further than that, as he charges and shows, certain interest on said bonds which became due on and prior to the first day of , 186 , and amounting to the sum of seventy-six thousand dollars, or thereabouts, remained, and remains, unpaid; and that for the cupons representing such unpaid interest, the holders thereof did conditionally agree, under an arrangement with said company, that they would take certain bonds known as "income bonds," or scrip convertible into such income bonds, only on condition that the interest accru-
499 ing on such bonds and scrip should be promptly paid, and also the principal when it became due; and to insure such payment, and not loose nor relinquish their lien on said road under said mortgage, the said holders of said unpaid interest cupons upon said bonds did conditionally deposit said interest cupons unpaid amounting to seventy-six thousand dollars, or thereabouts, as aforesaid, with a trustee, reserving and retaining the right, in case said income bonds and scrip & the interest thereon at seven per cent. per annum were not promptly paid by said company, to at any time surrender said income bonds or scrip to the said trustee holding their said unpaid cupons in trust as aforesaid, and to receive again their said unpaid cupons as aforesaid; and that the said company has failed to pay the semi-annual interest on said income bonds due on the first day of July, 1865, and since that date, and the interest on said scrip since the first day of July, 1863, and that the owners of said unpaid interest cupons and holders of such income bonds and convertible scrip elect to return said bonds and scrip and receive their cupons from said trustee, and now ask that said
500 unpaid interest cupons, and all of them, together with interest thereon, be reckoned and merged in the decree of this hon. court

as hereinafter prayed, together with all other unpaid interest, and interest thereon.

And your orator further says that there are other sums due sundry holders of said funds for unpaid interest thereon, of the exact amount of which your orator is not now advised.

Wherefore, in pursuance of the provisions of the said mortgage, and the land of the said State of Iowa, your orator as trustee, for the holders of said bonds as aforesaid, now claims on behalf of said bondholders that the whole of the principal sums mentioned in each and all of said bonds, and secured by said indenture of mortgage, has become, and is due and payable, with interest thereon at seven per cent. to date, and that your orator is now entitled to a forecloseure of the said mortgage in behalf of said bondholders for the whole principal sum and unpaid interest thereon so secured by said mortgage as aforesaid.

And your orator has been requested and directed by the holders of more than one-half in amount of said bonds to proceed to enforce and foreclose said mortgage in this action.

501 And your orator further shows unto your honors that the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., the complainants in the original bill of complaint in this cause, are, as your orator is informed and believes, trustees for divers persons holding certain other bonds issued by the said Mississippi and Missouri Railroad Company on or about the tenth day of December, 1861, which bonds are secured, or intended to be secured, by a certain other indenture of mortgage executed and delivered to said three complainants as trustees by the said railroad company, and also dated on the said 10th day of December, 1861, and conveying, or intending to convey, the entire railroad of said company, including the divisions mortgaged to your orator by three several mortgages as hereinbefore fully set forth; but your orator charges that the lien of said mortgage, and the rights of the said trustees and bondholders thereunder, are subject and junior to the liens created by all and each of the three mortgages to your orator as aforesaid, and inferior to the rights of your orator and the holders of the bonds secured by the said three mortgages severally executed by

502 the said railroad company to your orator as aforesaid.

And that the said defendants Mark Howard and John Webber have, or claim to have, or are supposed to have, some lien or claim upon the railroad and other property mortgaged to your orator as aforesaid, by reason of certain judgments by them recovered against the said Mississippi and Missouri Railroad Company, or otherwise; but your orator charges that all such claims or liens are subject and inferior to the liens created by all and every of your orator's said mortgages.

And your orator further complains and says that, as your orator is informed and charges the truth to be, the said Mississippi & Missouri railroad is now, and has always been since the construction of said divisions of said road, in actual posession thereof, and using and operating the same and recieving the earnings, income, and profits of said divisions, and should, by its promises and undertakings in said bonds and in said mortgages to your orator, have applied such earnings, after the payment of neesessary expenses, to the payment of the interest upon said

503 bonds; but the said railroad company has utterly failed and refused to apply its net earnings in payment of said interest, and has used and applied the net earnings of said divisions to other purposes and for other objects in violation of its covenants and agreements so contained in said bonds and mortgages; and that the unpaid interest is constantly accumulating and increasing to the amount of the indebtedness so secured

by said mortgages, while the property mortgaged is decreasing in value, thereby endangering the rights and security of the holders of said bonds, and your orator charges that the said Mississippi and Missouri Railroad Company is insolvent, and unable to pay its just debts and liabilities.

All which actings, doings, pretenses, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and his cestui's que trust in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and releivable.

504 To the end, therefore, that the said parties defendant to this cross-bill may show cause, if any they have, why your orator should not have the relief herein prayed, and that the said Mississippi and Missouri Railroad Company and the officers of said company, and the other defendants to this cross-bill, may, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, & perfect answers make to all and singular the matters and things aforesaid, and that as fully and particularly as if the same were here repeated, and they and every of them particularly and distinctly interrogated thereto.

And more especially that the said railroad company may, in manner aforesaid, answer and set forth from its books and records, and from such other source or sources of information as the said railroad company and its officers may have, or be able to obtain, full, true, and perfect accounts of the amount of bonds by said company issued and secured by your orator's said three mortgages and each one of them

505 respectively, and seperate, full, true, perfect, and particular accounts of the amount of interest due and unpaid on each of your orator's said three mortgages respectively; and further, what disposition, if any, was made of any unpaid cupons representing interest on any of said bonds, and the present condition of such unpaid interest cupons; and further, that said railroad company state fully and particularly how much and what rolling stock and other equipments, material, and property belong to the said first division of their said road and to the said Oskaloosa division thereof, respectively.

And that accounts may be taken, by and under the direction of this hon. court, of the amounts due upon the said bonds so secured by said three several mortgages to your orator as aforesaid, both for principal and unpaid interest thereon, an account being taken for the amount due on each of said mortgages seperately; and that the said Mississippi and Missouri Railroad Company be decreed to pay the holders of said bonds respectively the sums which by such accounts shall appear to be due thereon at the time of taking such accunt, with interest

506 and costs of suit on each mortgage respectively.

And also in default of such payment of the sums so found due upon the said two mortgages to your orator, conveying to your orator the said first division of the said railroad company's railroad as first herein set forth, the property conveyed and mortgaged in said two first-mentioned mortgages to your orator as aforesaid, to wit, the said railroad constructed and to be constructed, together with all and singular the railway's land procured or occupied for right of way, together with bridges, fences, priviledges, rights, & real estate owned by said company between the city of Davenport and the cities of Iowa City and Muscatine, and all the tolls, income, issues, and profits to be had from the same, and all the lands used or occupied for depots or stations, with all buildings standing thereon or procured therefor, together with all

the locomotive engines and tenders, passenger cars and freight car, shops, tools, & machinery, procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road, including
507 all the property of said company on said division, real & personal, and all the rights, credits, and franchises of the company in said division of railroad, and all and every other property, estate, claim, rights, demand, equities, and interest of every description whatsoever covered and conveyed in any manner whatsoever by said mortgages, and each of them, be sold by and under the direction of this hon. court by the marshall of the said district of Iowa, or by some master or other proper officer to be appointed therefor by this hon. court, at public auction to the highest bidder or bidders, for cash or its equivalent, in pursuance of law; and that upon such sale the said marshall or master, or other officer by whom such sale shall have been made, execute and deliver all proper conveyances, deeds, reciepts, and other instruments to the purchaser or purchasers at such sale, which shall vest in him or them the absolute title to all and singular the property so sold; and that the said purchaser or purchasers be thereupon put in full and actual posession of all and singular the property sold to them as aforesaid; and that upon such sale the said parties defendant to this cross-
508 bill, and all and every of them, and all and every person or persons claiming or to claim by, through, or under them, or any of them, be absolutely and forever barred and foreclosed of and from all and every right, interest, claim, title, demand, estate, and equity of redemption in and to the said property, and every part thereof.

And that the money arising from such sale be brought into court, and that there be paid thereout, first, the neesessary expenses of your orator in his trust, including the costs and charges of this suit, and the outlay of your orator for counsel and solicitors; second, the amount found due to holders of the bonds secured by said first recited mortgage to your orator for the principal and interest of their said bonds or obligations respectively; third, the amount found due to holders of the bonds secured by said second recited mortgage to your orator for the principal & interest of their said bonds or obligations respectively.

And that in default of such payment of the sums so found due upon the said third mortgage to your orator conveying to your orator the said Oskaloosa division of the said company's railroad as hereinbefore set forth, the property conveyed and mortgaged in said third
509 mentioned mortgage to your orator as aforesaid, to wit, the said railroad constructed and to be constructed, together with all and singular the railways, land used and occupied for right of way, together with bridges, fences, priviledges and rights owned by said company, between the city of Muscatine and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same, and all the lands procured, used, and occupied for depots or stations, with all buildings standing thereon or procureed therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery, procured for or connected with the division of ninety-five miles of road before described, and in any way belonging or appertaining to the said ninety-five miles of road, including all the property, rights, credits, and franchises of said company in said division of railroad, and all and every other property, estate, claim, rights, demand, equities, and interests of every description whatsoever, covered and conveyed in any manner whatsoever by said mortgage, be sold, by and

under the direction and order of this honorable court, by the marshall of the said district of Iowa, or by some master or other proper
510 officer to be appointed therefor by this hon. court, at public auction, to the highest bidder or bidders, for cash or its equivelant, in pursuance of law; and that upon such sale the said marshall or master, or other officer by whom such sale have been made, execute and deliver all proper and neesessary conveyances, deeds, reciepts, and other instruments to the purchaser or purchasers at such sale, which shall vest in him or them the absolute title to all and singular the property so sold; and that the said purchaser or purchasers be thereupon put in full and actual posession of all and singular the property sold to him or them as aforesaid; and that upon such the said parties defendant to this cross-bill, and all and every of them, and all and every person or persons, claiming, or to claim, by, through, or under them, or any of them, be absolutely and forever barred and foreclosed of and from all and every right, interest, claim, tittle, demand, estate, & equity of redemption in and to the said property, and every part thereof.

And that the money arising from such sale be brought into court, and that there be paid thereout, first, the neesessary expenses of your orator in his trust, including the costs and charges of this forecloseure and the outlay of your orator for counsel and solicitors; and second, the
511 amount found due to holders of the bonds, secured by said third recited mortgage to your orator as aforesaid, for the principal and interest of their said bonds or obligations respectively.

And that your orator may have such other and further relief in the premises as the nature of the circumstances of this case may require and to your honors shall seem meet and agreeable to equity and good conscience.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the parties made defendants by this your orators cross-bill, thereby commanding them, and every of them, at a certain day and under a certain penalty therein, to be inserted personally, to be and appear before your honors in this hon. court, and then and there to answer all and singular the premises and to stand to, perform, and abide such order and decree therein as your honors shall seem meet.

And, as in duty bound, your orator will ever pray, etc.

EDWARD W. DUNHAM.

JNO. P. COOK,
Solicitor for Plaintiff in Cross-bill.

512 "*Exhibit A.*"

This indenture made the first day of July, in the year one thousand eight hundred and fifty-five, between the Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas the Mississippi and Missouri Railroad Company, having been duly organized under and by virtue of the forty-third chapter of the code of Iowa, entitled "corporations for pecuniary benefit," approved February 5th, 1851; and the said incorporation having adopted articles of association on the twenty-second day of December, in the year 1852; and the same having been filed in the office of the Secretary of State of Iowa on the first day of February, A. D. 1853, which said corporation is to commence on the first day of January, 1853, and to continue fifty years; and whereas the Mississippi and Missouri Railroad Company is

now engaged in constructing the division of said road extending from Davenport to Iowa City, and the city of Muscatine, a distance of sixty-seven miles, and for that purpose are desirous of raising money
513 by the issue of bonds to the amount of one million of dollars, to be applied to the construction and completion of the said railroad from the city of Davenport to the cities of Iowa and Muscatine, and putting the same into operation, and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January, in each year, and the principal sum reimbursed on the first day of July, 1875, with the option on the part of the owner of the bond, of converting the same into the stock of the company, at any time previous to the first day of July, 1860, such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by the said party of the second part. The bond and certificate to be in the following form, viz:

"UNITED STATES OF AMERICA, *State of Iowa*:

"*Mississippi and Missouri Railroad Company.*

"No. $1,000.

514 "The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Edward W. Dunham, or bearer, one thousand dollars; which sum said company promise to pay to the said Edward W. Dunham, or to the holder thereof, in the city of New York, on the first day of July, 1875, and also interest thereon, at the rate of seven per cent. per annum, semi-annually, on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest warrants, at the Corn Exchange Bank, in the city of New York.

"And the said company further agree, that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand, payable to bearer.

"And the said company further agree, that on the surrender of this bond, on any of the days for the payment of interest, on or before the first day of July, 1860, the proprietor of this bond shall be entitled to the stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw pro rata dividends from this date.

515 "In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this first day of July, 1855.

President."
Treasurer."

"I hereby certify that the Mississippi and Missouri railroad have executed to me a deed of trust or mortgage, purporting to convey their road and its appurtenances as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all one million of dollars, with power to take possession of, and use or sell the

same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused said deed to be recorded in the several counties of the State of Iowa, through which said road passes.

Trustee."

516 Now, therefore, this indenture further witnesseth, that the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid, by the said Edward W. Dunham, the reciept whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Edward W. Dunham, and his successors in the trust hereby created, the said railroad, constructed and to be constructed, together with all & singular the railways, land procured or occupied for right of way, together with the bridges, fences, priviledges, rights, and real estate owned by said company, or which shall hereafter be owned by them, between the city of Davenport and the cities of Iowa and Muscatine, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight
517 cars, shops, tools, and machinery, procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road now constructed and to be constructed, including all the property of the company on said division, real and personal, and all the rights, credits, and franchises of the company, in said division of railroad,

To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successors in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or of any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the posession, control, & management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the
518 principal, or any part thereof, or any of the interest on any of the said bonds, at any time when the same may become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual posession of said railroad, and of all and singular the property and effects mortgaged, and through the agency of the persons he or they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said party of the second part, and his successors in said trust, at his or their discretion, may, or on the written request of the holders of at least one-half of the

bonds then unpaid, shall cause the said premises, or so much thereof as shall be neesessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' no-
519 tice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficint deed of conveyance, in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in or to said premises, or any part thereof, and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be neesessary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood, that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

It is further covenanted, on the part of the company, that the money loaned on the bonds shall be applied in good faith to the construction of said division of railroad, and the putting the same into operation.
520 And the said company do further covenant with the said trustee, and his successor in said trust, to make, execute, and deliver, all and singular, such further assurances and instruments as shall from time to time be neesessary, and as the said trustee, or his counsel, shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the neesessary use of said division of said road.

And it is hereby mutually agreed, and these presents are upon this express condition, that, on payment of the principal and interest of said bonds, the estate hereby granted to said party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revest in the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed, that the said party of the second part, his successors in said trust, and assigns, shall be en-
521 titled to recieve proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take posession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine; and the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the district court of the State of Iowa, sitting in any county in said State, to appoint a new trustee, being a resident in the city of New York, to supply his place; and thereupon such new trustee shall become vested for the purposes aforesaid with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be neesessary, both, or

same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused said deed to be recorded in the several counties of the State of Iowa, through which said road passes.

Trustee."

516 Now, therefore, this indenture further witnesseth, that the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid, by the said Edward W. Dunham, the reciept whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Edward W. Dunham, and his successors in the trust hereby created, the said railroad, constructed and to be constructed, together with all & singular the railways, land procured or occupied for right of way, together with the bridges, fences, priviledges, rights, and real estate owned by said company, or which shall hereafter be owned by them, between the city of Davenport and the cities of Iowa and Muscatine, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight
517 cars, shops, tools, and machinery, procured for or connected with the division of sixty-seven miles of road before described, and in any way belonging or appertaining to the said sixty-seven miles of road now constructed and to be constructed, including all the property of the company on said division, real and personal, and all the rights, credits, and franchises of the company, in said division of railroad,

To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successors in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or of any of them, about to be issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the posession, control, & management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the
518 principal, or any part thereof, or any of the interest on any of the said bonds, at any time when the same may become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual posession of said railroad, and of all and singular the property and effects mortgaged, and through the agency of the persons he or they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs; or the said party of the second part, and his successors in said trust, at his or their discretion, may, or on the written request of the holders of at least one-half of the

bonds then unpaid, shall cause the said premises, or so much thereof as shall be neesessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' no-
519 tice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficint deed of conveyance, in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in or to said premises, or any part thereof, and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proceeds as may be neesessary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood, that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

It is further covenanted, on the part of the company, that the money loaned on the bonds shall be applied in good faith to the construction of said division of railroad, and the putting the same into operation.
520 And the said company do further covenant with the said trustee, and his successor in said trust, to make, execute, and deliver, all and singular, such further assurances and instruments as shall from time to time be neesessary, and as the said trustee, or his counsel, shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the neesessary use of said division of said road.

And it is hereby mutually agreed, and these presents are upon this express condition, that, on payment of the principal and interest of said bonds, the estate hereby granted to said party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revest in the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed, that the said party of the second part, his successors in said trust, and assigns, shall be en-
521 titled to recieve proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take posession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises shall be divested, cease, and determine; and the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the district court of the State of Iowa, sitting in any county in said State, to appoint a new trustee, being a resident in the city of New York, to supply his place; and thereupon such new trustee shall become vested for the purposes aforesaid with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be neesessary, both, or

either of the parties hereto, shall execute any necessary releases or conveyances for that purpose.

In witness whereof, the parties of the first part have caused
522 their corporate seal to be hereto affixed, and the same to be subscribed by their president, and the said party of the second part has set his hand and seal, the day and year first above written.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed, and delivered in the presence of—
A. C. FLAGG.

{ SEAL OF THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY. }

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles I. Bushnell, a commissioner in said State, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proof of deeds, &c., to be used or recorded in the State of Iowa, and duly commissioned and sworn, and dwelling in the city of New York, do hereby certify, that on this fourth day of September, one thousand eight hundred and fifty-five, before me personally appeared John A Dix, president of the Mississippi and Missouri Railroad Company, & Edward W. Dunham, trustee, to me personally known, and acknowledged the annexed conveyance to be their voluntary act and deed, in their
523 respective capacities as president and trustee; also, at the same time and place, appeared A. C. Flagg, treasurer of said company, to me personally known, who, being by me duly sworn, did depose and say that he is treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so affixed by authority of the board of directors of said company, and that by like authority he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof, I, Charles I. Bushnell, commissioner as aforesaid, have hereunto set my hand and have affixed hereto my official seal as such commissioner, the 4th day of September, A. D. 1855.

{ L. S. CHARLES I. BUSHNELL, COMMISSIONER, &C., NEW YORK. }

C. I. BUSHNELL,
Commissioner in the State of New York, appointed by the governor of the State of Iowa, No. 63 Wall street, 3d story, New York City.

524 *Exhibit B.*

This indenture, made the first day of July, one thousand eight hundred and fifty-six, between the Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas the Mississippi and Missouri Railroad Company did, on the twenty-second day of December, 1852, adopt articles of association under and in pursuance of the provisions of chapter forty-third of the code of Iowa, entitled "Corporations for pecuniary benefit," approved February 5th, 1851, which said articles of association were filed in the

office of secretary of state of the State of Iowa on the first day of February, 1853, and notice of the filing thereof was duly published, by means whereof it became a body corporate and politic, commencing on the first day of January, 1853, and to continue fifty years from that date.

And whereas the Mississippi and Missouri Railroad Company have now constructed and finished the division of said road extending
525 from Davenport to Iowa City and the city of Muscatine, a distance of sixty-seven miles, and for the purpose of raising money to pay off the contractors and purchase additional equipments for this division of their road, they are desirous of raising money by the issue of a series of second mortgage bonds to the amount of four hundred thousand dollars, to be applied to that purpose; and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of eight per cent. per annum, payable semi-annually, on the first days of January and July in each year, and the principal reimbursable on the first day of July, 1876; such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times; each of said bonds being authenticated by a certificate signed by the said party of the second part. The bond & certificate to be in the following form, viz:

"UNITED STATES OF AMERICA, *State of Iowa:*

526 "*Mississippi and Missouri Railroad Company.—Second mortgage sinking fund bonds..*

"No. $1000.

"The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Edward W. Dunham, or bearer, one thousand dollars, which sum said company promise to pay to the said Edward W. Dunham, or to the holder hereof, in the city of New York, on the first day of July, 1876, and also interest thereon at the rate of eight per cent. per annum, semi-annually, on the first day of each January & July, ensuring the date hereof, until the said principal sum shall be paid, on the presentation of the annexed interest warrants, at the Corn Exchange Bank in the city of New York.

"And the said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special endorsement, or by delivery, as if the same were a note of hand payable to bearer.

"To secure the payment of this obligation the company have executed a second mortgage on the line of their road extending from the
527 city of Davenport to the cities of Iowa City and Muscatine, in the State of Iowa, and also passed a resolution creating a sinking fund of two and one-half per cent. on the amount of the bonds issued under the second mortgage, to take effect on and after the first day of July, 1859.

"In testimony whereof, the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president & treasurer this first day of July, 1856.

"JOHN A. DIX, "*President.*
"A. C. FLAGG, *Treasurer.*"

"I hereby certify that the Mississippi and Missouri Railroad Company have executed to me a deed of trust or mortgage purporting to convey their road and its appurtenances from the city of Davenport to

the cities of Iowa City and Muscatine, in the State of Iowa, subject to a first mortgage of one million of dollars on the said division of road, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be
528 issued, to an amount not exceeding in all four hundred thousand dollars, with power to take posession of and use or sell the same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused said deed to be recorded in the several counties of the State of Iowa, through which said road passes.

"EDWARD W. DUNHAM, *Trustee.*"

Now, therefore, this indenture further witnesseth that the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid, by the said Edward W. Dunham, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Edward W. Dunham and his successors in the trust hereby created, the said railroad constructed and to be constructed, together with all and
529 singular the railways, land used and occupied for right of way, together with bridges, fences, priviledges, and rights owned by said company, or which shall hereafter be owned by them, between the city of Davenport and the cities of Iowa City and Muscatine, in the State of Iowa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars, and freight cars, shops, tools, and machinery procured for or connected with the division of road before described, and in any way belonging or appertaining to the said division of road now constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad, subject to a previous mortgage of one million of dollars, made between the same parties, on the first day of July, 1855, to have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the
530 said Edward W. Dunham, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds or any of them, about to be issued by said company as aforesaid, subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the posession, control, and management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds, at any time when the same may become due and payable according to the tenor thereof, when demanded, then after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual posession of said railroad, and of all and singular the property and
531 effects mortgaged, and, through the agency of the persons he or

they may from time to time appoint, shall receive the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage, first defraying out of the same the expenses of the road and its needful repairs, or the said party of the second part, and his successors in said trust, at his or their discretion, may, or on the written request of the holders of at least one-half of the bonds then unpaid, shall cause the said premises, or so much thereof as shall be neesessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same; which shall be a bar against the parties of the first part, their successors and assigns, and
532 all persons claiming under them of all right, or interest, or claim in and to said premises, or any part thereof; the said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property, apply so much of the proeeeds as may be neeses-ary to the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

And it is further covenanted on the part of the company, that the money loaned on the said bonds shall be applied in good faith to the construction of said division of railroad, and the putting the same into operation.

And the said company do further covenant with said trustee, and his successor in said trust, to make, execute, and deliver, all and singular, such further assurances and instruments as shall from time to time
533 be neesessary, and as the said trustee or his counsel shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or so to be intended, and to be hereafter acquired for the neesessary use of said division of said road.

And it is hereby mutually agreed, and these presents are upon this expressed condition, that on payment of the principal and interest of said bonds, the estate hereby granted to said party of the second part, shall be void, and the right of the premises hereby conveyed shall revert to, and revest in, the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction, reconveyance, re-entry, or other act.

And it is also further mutually agreed, that the said party of the second part, his successors in said trust, and assigns, shall be entitled to recieve proper compensation for every labor or service performed by him in the discharge of his trust in case he shall be compelled to take
534 posession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control in the premises, shall be divested, cease, and determine; and the said parties of the first part shall, or in their default to take proceedings therefor for thirty days, the holders of

a majority of the said bonds may apply to the district court of the State of Iowa, sitting in any county, in any State, to appoint a new trustee, being a resident in the city of New York, to supply his place; & thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interests hereby conveyed to, or vested in, the said party of the second part, without any further assurance or conveyance for the same; but if the same shall be neesessary, both, or either of the parties hereto, shall execute any neesessary releases or conveyances for that purpose.

In witness whereof, the parties of the first part have caused
535 their corporate seal to be hereto affixed, and the same to be subscribed by their president; and the said party of the second part has set his hand and seal, the day and year first above written.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed, and delivered in the presence of—
A. C. FLAGG, *Witness as to seal.*

L. S.
MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proof of deeds, &c., to be used or recorded in said State of Iowa, duly commissioned, and dwelling in the city of New York, do hereby certify that on the eighteenth day of November, A. D. one thousand eight hundred and fifty-six, before me personally came John A. Dix, president of the Mississippi and Missouri Railroad Com-
536 pany, and E. W. Dunham, trustee, to me personally known, and acknowledged mortgage or conveyance to be their voluntary act and deed, in their respective capacity of president and trustee.

Also at the same time and place personally appeared A. C. Flagg, treasurer of said company, to me personally known, who, being by me duly sworn, did depose and say that he is the treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so affixed by authority of the board of directors, & by like authority, he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof, I, Joseph C. Lawrence, commissioner as aforesaid, have hereunto set my hand, and have affixed my official seal as such commissioner.

[SEAL.] JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa.

537 "*Exhibit C.*"

This indenture, made the first day of July, in the year one thousand eight hundred and fifty-six, between the Mississippi and Missouri Railroad Company of the first part, and Edward W. Dunham, of the city of New York, of the second part, witnesseth as follows:

Whereas the Mississippi and Missouri Railroad Company did, on the twenty-second day of December, 1852, adopt articles of association under

and in pursuance of the provision of chapter forty-third of the code of Iowa, entitled "Corporations for pecuniary benefit," approved February 5th, 1851, which said articles of association were filed in the office of the secretary of state of the State of Iowa on the first day of February, 1853, and notice of the filing thereof was duly published, by means whereof it became a body corporate and politic, commencing on the first day of January, 1853, and to continue for fifty years from that date.

And whereas the Mississippi and Missouri Railroad Company is now engaged in constructing the division of said road extending from
538 the city of Muscatine to Oskaloosa, a distance of ninety-five miles, and for that purpose are desirous of raising money, by the issue of bonds, to the amount of one million four hundred and twenty-five thousand dollars, to be applied to the construction and completion of the said railroad from the city of Muscatine to Oskaloosa, and putting the same into operation, and in order to secure the payment of the money borrowed, it is proposed to execute bonds for the sum of one thousand dollars each, bearing interest at the rate of seven per cent. per annum payable semi-annually, on the first day of July and January in each year, and the principal reimbursable on the first day of July, 1876, with the option on the part of the owner of the bond of converting the same into the stock of the company at any time previous to the first day of July, 1861, such bonds to be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times; each of said bonds being authenticated by a certificate signed by the said party of the second part; the bond and certificate to be in the following form, viz:

539 "UNITED STATES OF AMERICA, *State of Iowa:*

"*Mississippi and Missouri Railroad Company.—Oskaloosa division.*

"No. $1,000.

"The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Edward W. Dunham, or bearer, one thousand dollars, which sum the said company promise to pay to the said Edward W. Dunham, or to the holder hereof, in the city of New York, on the first day of July, 1876, and also interest thereon at the rate of seven per cent. per annum semi-annually on the first day of each January and July ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest warrants at the Corn Exchange Bank, in the city of New York.

"And the said company further agree that this obligation, and all rights and benefits arising therefrom, may be transferred by general or special indorsement, or by delivery, as if the same were a note of hand payable to bearer.

"And the said company further agree that after this division
540 shall be completed, and on the surrender of this bond on any of this days, for the payment of interest on or before the first of July, 1861, the proprietor of this bond shall be entitled to the stock of this company at par, for the face of this bond, in satisfaction thereof, and to a certificate of such stock entitled to draw pro rata dividends from this date.

"In testimony whereof, the said company has hereunto caused to be affixed its corporate seal, and these presents to be subscribed by its president & treasurer this first day of July, 1856.

"JOHN A. DIX, *President.*
"A. C. FLAGG, *Treasurer.*"

"I hereby certify that the Mississippi and Missouri Railroad Company have executed to me a deed of trust or mortgage purporting to convey their road and its appurtenances, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all one million four hundred and twenty-five thousand dollars, with
541 power to take posession of, and use or sell the same, or any part thereof, after a default in paying the interest or principal of said bonds, or any of them; and that the foregoing is one of the several bonds described in and secured by said deed, and that I have caused the said deed to be recorded in the several counties of the State of Iowa through which said road passes.

"EDWARD W. DUNHAM, *Trustee.*"

Now, therefore, this indenture further witnesseth: That the said Mississippi and Missouri Railroad Company, in order to secure the payment of said bonds & interest, and in consideration of the sum of one dollar to them, at the ensealing and delivery hereof, in hand paid by the said Edward W. Dunham, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, & by these presents do grant, bargain, sell, tranfer, and convey to the said Edward W. Dunham, and his suceessors in the trust hereby created, the said railroad constructed, and to be constructed, together with all and singular the railways, land used and occupied for right of way,
542 together with bridges, fences, priviledges, and rights owned by said company, or which shall hereafter be owned by them, between the city of Muscatine and the city of Oskaloosa, and all the tolls, income, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon, or which shall be procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, and machinery procured for or connected with the division of ninety-five miles of road before described, and in any way belonging or appertaining to the said ninety-five miles of road now constructed, and to be constructed, including all the property, rights, credits, and franchises of the company in said division of railroad.

To have and to hold the said premises, and every part thereof, with the appurtenances, unto him, the said Edward W. Dunham, his successor in said office of trustee, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds, or any of them, about to be issued by the said company as aforesaid,
543 subject to the terms and stipulations of the said bonds, and the provisions of the charter of said company, and the amendments thereto, under which said company derives its powers, and subject to the posession, control, and management of the directors of said company, so long as said company shall well and truly perform all and singular the stipulations of the bonds aforesaid, and the covenants of this indenture; and in case the said Mississippi and Missouri Railroad Company shall fail to pay the principal, or any part thereof, or any of the interest on any of the said bonds at any time when the same may become due and payable, according to the tenor thereof, when demanded, then, after sixty days from such default, upon the request of the holder of any such bond, the said Edward W. Dunham, and his successors in said trust, may and shall take actual posession of said railroad, and of all and singular the property and effects mortgaged, and, through the agency of the persons he or they may from time to time appoint, shall

recieve the income and profits of said railroad and mortgaged property for the purpose of paying the bonds issued under this mortgage,
544 first defraying out of the same the expenses of the road and its needful repairs; or the said party of the second part, and his successors in said trust, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid, shall cause the said premises, or so much thereof as shall be neesessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circulation in said city, and wherever else required by law, and to execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right or interest or claim in or to said premises, or any part thereof; and said trustees shall, after deducting from the proceeds of said sale the costs and expenses thereof, and of managing such property,
545 apply so much of the proceeds as may be neesessary for the payment of said principal and interest on said bonds, and shall restore the residue thereof to the parties of the first part; it being expressly understood that in no case shall any claim or advantage be taken of any valuation, or appraisement, or extension laws, by the said parties of the first part, to prevent such entry or sale as aforesaid.

And it is further covenanted, on the part of the company, that the money loaned on the said bonds shall be applied in good faith to the construction of said division of railroad and the putting the same into operation.

And the said company do further covenant with the said trustee, and his successor in said trust, to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be neesessary, and as the said trustee, or his counsel, shall reasonably advise or require, for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or
546 so to be intended, and to be hereafter acquired for the neesessary use for the said division of said road.

And it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, the estate hereby granted to the party of the second part shall be void, and the right of the premises hereby conveyed shall revert to and revest in the said parties of the first part, in law and in fact, without any acknowledgment of satisfaction reconveyance, re-entry, or other act.

And it is also further mutually agreed, that the said party of the second part, his successors in said trust, and assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take posession of said premises, or any part thereof, or manage the same.

And it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, all his estate, right, interest, power, and control of the premises shall be divested, cease and determine; and the said parties of the first
547 part shall, or, in their default to take proceedings, therefor, for

thirty days, the holders of a majority of the said bonds may, apply to the district court of the State of Iowa, sitting in any county in said State, to appoint a new trustee, being a resident in the city of New York, to supply his place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights & interests hereby conveyed to or vested in the said party of the second part, without further assurance or conveyance for the same; but if the same shall be neesessary both, or either of the parties hereto, shall execute any neesessary releases or conveyances for that purpose.

In witness whereof, the parties of the first part have caused their corporate seal to be hereto affixed, and these presents to be subscribed by their president; and the said party of the second part has set his hand and seal the day and year first above written.

JOHN A. DIX, *President.*
E. W. DUNHAM, *Trustee.*

Signed, sealed and delivered in the presence of—
A. C. FLAGG, *Witness as to the seal.*

L. S.
MISSISSIPPI & MISSOURI
RAILROAD COMPANY.

548 STATE OF NEW YORK,
City and County of New York, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, appointed by the governor of the State of Iowa to administer oaths and affirmations, and to take depositions, affidavits, and the acknowledgment and proof of deeds, &c., to be used and recorded in the said State of Iowa, duly commissioned and sworn, dwelling in the city of New York, do hereby certify that on the twenty-seventh day of September, one thousand eight hundred and fifty-six, before me personally appeared John A. Dix, president of the Mississippi and Missouri Railroad Company, and E. W. Dunham, trustee, to me personally known, and acknowledged the annexed conveyance to be their voluntary act and deed in their respective capacities of president and trustee.

Also at the same time and place personally appeared A. C. Flagg, treasurer of said company, to me personally known, who being by me duly sworn did depose and say that he is treasurer of the Mississippi and Missouri Railroad Company; that the seal affixed to the annexed conveyance is the corporate seal of said company, and was so
549 affixed by the authority of the board of directors, and by like authority he, together with John A. Dix, subscribed their names as president and treasurer of said company.

In testimony whereof, I, Joseph C. Lawrence, commissioner as aforesaid, have hereunto set my hand, and have affixed my official seal as such commissioner.

[L. S.] JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa.

Cross-bill and exhibits of E. W. Dunham.
Endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

550 On the same day, to wit, the ninth day of May, A. D. 1866, came Thomas E. Walker and Franklin Haven, by John P. Cook, their

solicitor, and filed in said clerk's office a cross-bill, which is in the words and figures following, to wit:

In the circuit court, U. S., district of Iowa.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et als. } Cross-bill.

The State and district of Iowa.

THOMAS E. WALKER AND FRANKLIN HAVEN, trustees, &c.,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, John Webber, and Mark Howard.

To the judges of the circuit court of the United States for the district of Iowa:

Thomas E. Walker & Franklin Haven, trustees and mortga-
551 gees for sundry parties, the said Thomas E. Walker being a citizen and resident of the State of New Jersey, and the said Franklin Haven being a citizen and resident of the city of Boston, in the State of Massachusetts, bring this their cross-bill against Thomas C. Durant of Brooklyn, in the State of New York, Jacob S. Wetmore and Robert B. Minturn, junior, of the city, county, and State of New York, and all citizens of the State of New York, "The Mississippi and Missouri Railroad Company," a corporation existing and duly organized under and by virtue of the laws of the State of Iowa, and having its principal place of business in the city of Davenport, in the county of Scott and State of Iowa aforesaid, Mark Howard of Hartford, a citizen of the State of Conneticut, and John Webber of Philadelphia, a citizen of the State of Pensylvania; and thereupon your orators complain and say—

That heretofore, to wit, on or about the fifth day of February, A. D. 1866, the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, filed in this honorable court their certain bill of com-
plaint against the said Mississippi and Missouri Railroad Com-
552 pany and others as defendants, praying the foreclosure of a certain mortgage executed to the said complainants by the said railroad company, and setting forth that your orators, in this cross-bill, as trustees for divers owners of bonds issued by the said railroad company and secured by a certain mortgage on the second division of the said railroad of said company.

And thereafter, to wit, on the ninth day of May, A. D. 1866, the said complainants filed in this honorable court an amendment to their said bill, wherein and whereby they made your orators also parties defendants to their said bill of complaint, and prayed as before in their original bill for the foreclosure of their said mortgage.

Your orators further complain and say that the said Mississippi and Missouri Railroad Company is a corporation organized and existing under and by virtue of the laws of Iowa, for the purpose of building a railroad and operating the same from the eastern line of the State of

Iowa, at or near Davenport, in the county of Scott, to the west
553 line of said State at or near Council Bluffs, with power to construct, maintain, and use a branch railroad, from the main line of said road southwesterly by the way of Muscatine to the southern or western boundary of Iowa, or both, and with full power to borrow money, and to execute mortgages on said roads and on other property and franchises of said company to secure the repayment of the same.

That said railroad has constructed and now uses and operates a railroad from said city of Davenport via Iowa City to Kellogg, in the county of Jasper, in said State, a distance of about one hundred and thirty-one miles, with depots, stations, and buildings, and also a branch road from Wilton Junction, on the said main line, via Muscatine to Washington, in Washington County, a distance of about fifty-three miles; and that the said railroad company is also the owner of and in posession and use of a large number of locomotive engines, passenger and freight cars, as well as machine shops, machinery, tools, and implements, and has on hand a large amount of material suitable for
554 the construction and repair of cars and other rolling stock on its said road, and also a large quantity ot wood for fuel.

That said railroad was built in three divisions as follows, to wit:

The first division extends from said city of Davenport to said Iowa City, and also to the city of Muscatine, in Muscatine County.

The second division commences at and extends from said Iowa City to Council Bluffs in said State, but is only partially constructed and operated, viz., to Kellogg, as aforesaid.

The third or Oskaloosa division extends from said city of Muscatine to Oskaloosa, in Mahaska County, but is only partially constructed and operated, viz., to Washington, as aforesaid.

That on or about the eighth day of May, 1857, the said Mississippi and Missouri Railroad Company being desirous to construct and complete the said second division of its road, to wit, from Iowa City west, as aforesaid, issued its bonds or obligations bearing date the said eighth day of May, 1857, for a large amount, as hereinafter to be stated,
555 each of said bonds being for the sum of one thousand dollars, in order to raise funds for the purpose aforesaid, and to put the said second division of its said road into operation, and for the purpose of securing the payment of such bonds and interest thereon at the rate of seven per cent. per annum, payable semi-annually, the said Mississippi and Missouri Railroad Company on the said eighth day of May, 1857, made, executed, and delivered unto your orator, the said Thomas E. Walker, and one Curtis B. Raymond, as trustees, a certain indenture of mortgage under the corporate seal of said company, and duly signed by the president and treasurer of said company.

And your orators hereto annex a true copy of the said indenture of mortgage marked "Exhibit A," and pray that the same may be taken and considered as an integral part of this petition; and your orators hereby refer to said exhibit for greater certainty and more full recitations as to the stipulations and agreements therein contained, and in this pleading or bill of complaint to be mentioned or referred to.

That in the said indenture of mortgage it is recited that the said railroad company had become entitled to a large amount of public
556 lands of the United States, situate in the State of Iowa, pursuant to the provisions of an act of Congress approved the fifteenth day of May, 1856, and entitled "An act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain railroads in said State," which act is incorporated in and fully

set forth in said indenture, and refrence is hereby made for a copy thereof to said Exhibit A made a part hereof as aforesaid.

And in said indenture of mortgage it is further recited that the grant made by the act of Congress aforesaid was accepted by the general assembly of the State of Iowa, by an act approved the 14th day of July, 1856, entitled "An act to accept of the grant, and to carry into execution the trust conferred upon the State of Iowa by an act of Congress, entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856;" which act of the general assembly of the State of Iowa is also fully and correctly set forth in said indenture, and refrence is hereby made for a copy thereof to said Exhibit A, made a part hereof as aforesaid.

557 And it is further recited in said mortgage that the general assembly of the State of Iowa, for the purpose of carrying out and facilitating the objects of the grant made by the said acts, passed a supplementary act, which was approved the twenty-eighth day of January, 1857; which act of the general assembly of the State of Iowa, last aforesaid, is also embraced and fully recited in said indenture, and refrence is hereby made for a copy thereof to said Exhibit A, made a part hereof as aforesaid.

And in and by said mortgage it is further recited & stipulated that the said Mississippi and Missouri Railroad Company, for the purpose of raising funds from time to time for the construction and completion of the portion of railroad hereinafter described, (viz, the said second division of its said road,) and other purposes, proposed to execute and deliver to said trustees its construction bonds or obligations, in pursuance of the provisions of the act of the general assembly of the State of Iowa last-above referred to, approved the twenty-eighth day of January,

558 1857, and thereby to become indebted to various persons, bodies politic or corporate, who should become holders of the said construction bonds or obligations, in the sum of seven millions of dollars, secured to be paid by seven thousand bonds or obligations of said company of and for the sum of $1,000 each, to be issued and secured by the terms and conditions of said indenture of mortgage; each of which bonds should provide for the payment unto the holders thereof of the sum of $1,000 on the eighth day of May, 1877, and also for the interest thereon, at the rate of seven per cent. per annum, payable on the eighth day of November and May ensuing the date of said bonds, until the principal sums therein named should be paid and satisfied, according to the tenor hereof; each of the said bonds to be authenticated by a certificate signed by the said trustees, and to be in a form set forth in said indenture; and refrence is hereby had to said Exhibit A, made a part hereof as aforesaid, for a copy of the said bonds, and of the certificate of said trustees.

And in and by said indenture of mortgage, the said Mississppi

559 and Missouri Railroad Company did covenant and agree to pay to the holders of said bonds the said principal sums of money therein mentioned, and that if any default should be made in the payment, either of principal or interest on any of said bonds for sixty days after demand at the place of payment when the same became due, then the said trustees may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into, and take possession of, said division of railroad, and all of its appurtenances, and all the property conveyed by said indenture of mortgage; and, if default should continue for one year after or from the time of such demand and

refusal, the principal sum of such bonds should become due and payable, and the said trustee may sell said road or property and apply the proceeds as in and by said indenture is provided.

And the said mortgage further provides that in case a vacancy should happen in the number of trustees therein mentioned, the remaining trustees should, while said vacancy exists, have all the rights, and exercise all the powers devolving on both said trustees until another
560 trustee shall be appointed; which appointment should be made in a manner pointed out and stipulated for in said indenture.

And that thereupon the said Mississippi and Missouri Railroad Company, for securing the payment of the sums of money mentioned in the said bonds or obligations, and the interest thereon, and also for and in consideration of the sum of one dollar, in hand paid by the trustees aforesaid, did, in and by the said indenture of mortgage, grant, bargain, sell, convey, and confirm unto the said trustees, and their successors who might be appointed or selected as provided for in said mortgage, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, then owned, or thereafter to be acquired, by said company, consisting or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, being a part of the railroad of said company, extending from the city of Davenport, on the Mississippi River, to said Council Bluffs on the Missouri River; together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above-described division of said railroad, and all the franchises, rights,
561 and priviledges appurtenent to said division, then existing or thereafter to be acquired.

Also all right, title, interest, claim, or demand which said Mississippi & Missouri Railroad Company then had, or should thereafter acquire, in or to all public lands of the United States, granted by the above-cited act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State, by the above-recited act, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company; subject, however, to the terms and conditions of the above-recited act of Congress, and the above-recited acts of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property and posession, claim and demand, whatever, in law or in equity, of the said railroad company in and to the same, and each and every part and parcel thereof, excepting, saving, and reserving to the said railroad company all lands then owned, or thereafter to be acquired, by said company, which may not be included in the said grant of public land from the United States, and may not be neesessary for the uses and purposes of said railroad, and the depots and right of way thereof.

562 To have and to hold all and singular the lands and premises thereby granted, or intended to be granted, and each and every part or parcel thereof, with the appurtenances thereunto belonging, unto the said trustees, or to the survivor of them, and their successors appointed or selected in the manner provided in said mortgage, for the uses and purposes, and upon the trusts, terms, and conditions in said indenture set forth and declared.

Which said mortgage was made subject to a promise or condition in said indenture contained, to wit, that if the said railroad company should well and truly pay, or cause to be paid to the holders of the said bonds and every of them the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the time and in the manner as in said indenture provided, according to the

true intent and meaning of said indenture, that then and thenceforth said indenture and the estate thereby granted should cease and determine, and all the right, title, and interest in all and any property thereby conveyed to said trustee, not then disposed of by them
563 under the powers thereby conferred upon them, should revert to and vest in the said railroad company.

And said mortgage further witnessed that it and the said bonds or obligations were made, executed, and delivered upon certain terms, conditions, and agreements which are therein recited; and for said terms, conditions, and agreements refrence is hereby had to said mortgage, a copy of which is made part hereof as aforesaid, wherein said terms, conditions, and agreements are set forth and declared; all of which will fully and at large appear by refrence to said mortgage, a copy of which is hereto annexed as aforesaid, and made a part hereof.

Said indenture of mortgage was duly recorded in the proper office, in the said county of Scott, and in all the counties through which the said railroad runs, and in which the property thereby conveyed is situated.

And your orators further show to your honors that the said Mississippi and Missouri Railroad Company, in pursuance of its inten-
564 tion, as recited in said mortgage, did execute and issue under their corporate seal a series of bonds or obligations called or known as first mortgage construction or land grant bonds, bearing even date with said mortgage, whereby said company promised and agreed to pay to the bearers of said bonds respectively the sums therein expressed, on the eighth day of May, 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the eighth day of November & May, ensuing the date thereof, until the principal sum should be paid.

And your orators further show that the aggregate principal sum of the bonds, so executed and delivered by said railroad company as aforesaid, and secured by the said indenture of mortgage, and now actually outstanding, is the sum of three million and six hundred and sixteen thousand ($3,616,000) dollars.

The said bonds are now held and owned by divers persons who have paid value for the same, and are valid and subsisting obligations against said company to the full amounts thereof, together with the interest due and unpaid thereon.

565 And your orators further show that, since the execution of the said mortgage and the acceptance of the trust by your orators, the said Thomas E. Walker and by the said Curtis B. Raymond, the said Curtis B. Raymond has resigned his trust and refused to act further in the premises; and that, upon the resignation of said Raymond, your orator Franklin Haven has been duly appointed a trustee and successor in place of said Raymond, in the manner provided for in said indenture of mortgage, and has duly accepted said trust in connection with your orator, the said Thomas E. Walker.

And your orators herewith file, and exhibit to your honor, a schedule or list, showing the lands conveyed to the said railroad company by the acts of Congress, and the general assembly of the State of Iowa, as aforesaid, as well other lands acquired by purchase, upon which the said indenture of mortgage is a lien, and which were mortgaged by the said company to your orators in trust, as aforesaid, to secure the payment of the said bonds or obligations of the said company.

566 The said schedule of lands so granted by Congress, and the State of Iowa, to said defendant the Mississippi and Missouri Railroad Company, is contained in a bound book, deposited with the

clerk of said court, and filed with this petition, the same not being suitable to attach hereto.

Further complaining, your orators show unto your honor that the condition of the said mortgage has been broken, and the said Mississippi and Missouri Railroad Company is in default in this, to wit, that the said railroad company has failed and refused to pay, or cause to be paid, to the owners or holders of said bonds secured by said mortgage, as aforesaid, or to any of them, the said semi-annual interest due and payable thereon, at the times and in the manner specified in said bonds, although payment thereof has been duly demanded at the place of payment when the same became due, and that there is now due for interest in arrear on said bonds, a large sum of money now amounting, according to your orator's information and belief, to about the sum of six hundred and eighty-one thousand eight hundred and eighty-four ($681,884) dollars, at the date of filing this bill, that is to say, the
567 sum of $253,500 ^{00}, or thereabouts, for interest accrued and maturing on or prior to the eighth day of May, 1864, the cupons representing which said interest have been conditionally funded or deposited with a trustee by the owners thereof, and interest on said last-mentioned sum, at the rate of seven per cent. per annum, from the first day of January, A. D. 1865; also a further sum of $12,550 ^{00}, or thereabouts, for interest accrued and maturing on or prior to the eighth day of May, 1864, the cupons representing which said interest have also been conditionally funded, as aforesaid, and scrip issued therefor and interest on said last-mentioned sum, at the rate of seven per cent. per annum, from the eighth day of May, 1864, and also a further sum for interest due and unpaid upon said bonds, upon and prior to the eighth day of November, 1864; and also the interest due on the whole of said bonds outstanding, on the eighth day of May, A. D. 1865, and also interest due on the whole of said bonds outstanding, on the eighth day of November, A. D. 1865; and further such additional interest as
568 has accrued on the said principal sum of said bonds since the said eighth day of November, 1865, and interest at seven per cent. per annum, upon the unpaid interest cupons since default in the payment thereof.

Wherefore and in pursuance of the terms of the said mortgage as hereinbefore set forth, your orators, as trustees for the holders of the said bonds, charge that the principal sums of the said bonds have become due & payable, and that your orators in behalf of the said bondholders are entitled to a foreclosure of said mortgage and an enforcement of the lien thereof for the entire principal and unpaid interest so secured by said mortgage as aforesaid.

And your orators further show that they have been requested and directed by the owners and holders of a number of said bonds, exceeding in amount the sum of one hundred thousand dollars, to institute proceedings to foreclose the said mortgage by suit, and cause the property to be sold to satisfy the amount due said bondholders for principal and interest.

And your orators further show unto your honor, that the said de-
569 fendants, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, are, as your orators are informed and believe, trustees for divers persons holding a class of bonds issued by the said Mississippi and Missouri Railroad Company on or about the tenth day of December, 1861, which bonds are secured, or intended to be secured, by a certain indenture of mortgage executed and delivered to said trustees by the said railroad company, and dated on or about the said tenth

day of December, 1861, but your orators charge that the lien of said mortgage and the rights of said trustees and bondholders thereunder, are subject and junior to the mortgage of your orators, and inferior to the rights of your orators and the holders of the bonds secured by the mortgage executed by said railroad company to your orators as aforesaid.

And that the said defendants John Webber & Mark Howard have or claim to have some lien or claim upon the railroad and other property mortgaged to your orators as aforesaid, by virtue of certain judgments by them recovered against said railroad company, but your orators
570 charge that such judgments or liens are subject to and inferior to the lien of your orators' mortgage.

Further complaining your orators show unto your honor that, as your orators are informed and believe, and therefore charge the truth to be, the said Mississippi and Missouri Railroad Company is now, and has always been since the construction of said division of said road, in actual posession thereof, and using and operating the same, & receiving the earnings and profits of said road; and should by its promises and undertakings in said bonds and said mortgage to your orators have applied such earnings, after the payment of the neesessary expenses, to the payment of the cupons for interest issued with and attached to said bonds, but the said railroad company has utterly failed and refused to apply its earnings in payment of said interest, and has used and applied the nett earnings of said division to other purposes and for other objects in violation of its covenants and agreements so contained in said bonds and mortgage; that the accumulating interest is constantly
571 increasing the amount of the indebtedness so secured by said mortgage, while the property mortgaged is decreasing in value, thus endangering the rights and security of the holders of said bonds, and your orators aver that the said Mississippi and Missouri Railroad Company is insolvent, and unable to pay its debts and liabilities.

All which actings, doings, pretenses, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators and their cestui que trust in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are property cognizable and relievable.

To the end therefore that the said defendants may show cause, if any they have, why your orators should not have the relief herein prayed, and that the said Mississippi and Missouri Railroad Company upon the corporal oaths of the officers thereof, and the other defendants
572 upon their several and respective corporal oaths, may, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, distinct & perfect answer make to all & singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, and more especially that the said railroad company may in manner aforesaid answer and set forth from its books and records, and from such other source or sources of information as the said railroad company or its officers may have or be able to obtain, a full, true, & perfect account, of the amount of bonds by said company issued and secured by your orators' said mortgage, and of the amount of interest due and unpaid thereon, and further, what disposition, if any, was made of any unpaid cupons representing interest on said bonds, which fell due or matured on or before the 8th day of November, 1864, and the present condition of such unpaid interest cupons, and that

said railroad company may state fully how much of the rolling stock of said road belongs to the said second division of said railroad.

573 And your orators further pray that an account may be taken by and under the direction of this honorable court of the amount due upon the said bonds so secured by the mortgage to your orators as aforesaid, both for principal and unpaid interest thereon, and that the said Mississippi and Missouri Railroad Company may be decreed to pay to the holders of said bonds respectively the sum or sums which shall appear to be due thereon, upon the taking of such account as aforesaid, together with your orators' costs of suit, and that in default of such payment the said mortgaged property, to wit, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad now owned by the said railroad company, constituting or belonging to the railroad of said company, extending from Iowa City in the State of Iowa to Council Bluffs on the Missouri, being a part of the railroad of said company extending from Davenport, on the Mississippi, to said Council Bluffs, on the Missouri, together with all the locomotives, cars, buildings, machinery, tools, and implements whatever appurtenant to the above-described division of said railroad, and all the franchises, rights, and privileges appurtenant to said division; also all right, title, claim,

574 interest, or demand of the said railroad company in or to all said lands granted by the said act of Congress by the United States to the State of Iowa, and by the said State of Iowa to the said company; and all other property, estate, claims, rights, and interests of every description whatsoever covered and conveyed, or intended to be covered and conveyed, by said mortgage, may be sold by and under the direction of this court by the marshall of said district of Iowa, or by a master to be appointed therefor by this court, at public auction to the highest bidder for cash or its equivelent & that upon such sale the said marshall or master, by whom such sale shall have been made, may execute and deliver all proper and neesessary conveyances, deeds, or other instruments to the purchaser or purchasers of such sale which shall vest in him or them the absolute title to all and singular the property so sold, and that the said purchaser or purchasers may thereupon be put in full and actual posession of all and singular the property sold to them as aforesaid; and that upon said sale, the said defendants and all and each

575 of them, and all and every person claiming by, through, or under them, or any of them, be forever barred and foreclosed of and from all and every right, interest, claim, title, demand, or equity of redemption in or to the said property, and every part thereof.

And that the money arising from such sale may be brought into court, and that there be paid thereout, first, the neesessary expenses of your orators in their trust, including the cost and charges of this court, and the outlay of your orators for counsel and attorneys' fees; and, secondly, the amounts found due to the holders of said bonds for the principal and interest of their said bonds or obligations respectively.

And that your orators may have such other and further relief in the premises as the nature of the circumstances of this case may require, and to your honour may seem meet, & agreeable to equity and good conseience.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America to be directed to all of said defendants, thereby commanding them and each of

576 them at a certain day, and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court, and then and there answer all and singular the

premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet; and your orators will ever pray, &c.

JNO. P. COOK,
Solicitor for Complainant.

THOS. E. WALKER,
FRANKLIN HAVEN,
Complainants.

"*Exhibit A.*"

This indenture of mortgage, made this eighth day of May, in the year of our Lord eighteen hundred and fifty-seven, between the Mississippi and Missouri Railroad Company, a company organized under and in conformity to the acts of the general assembly of the State of Iowa, of the first part, and Thomas E. Walker, of the city of New York, and Curtis B. Raymond, of the city of Boston, parties of the second part, they being trustees for the uses and purposes, and upon the
577 terms and conditions, hereinafter set forth, witnesseth:

Whereas the party of the first part has become entitled to a large amount of public lands of the United States, situate in the State of Iowa, pursuant to the provisions of an act of Congress approved the fifteenth day of May, eighteen hundred and fifty-six, and entitled "An act making a grant of lands to the State of Iowa in alternate sections," to aid in the construction of certain railroads in said State, which act is in the following words, to wit:

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central air-line railroad near Maquo-
578 keta; thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River; from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tête des Morts to the nearest point on said road, every alternate section of land designated by odd numbers for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as
579 aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads, and selected for and on account

of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which said lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operations of this act, except so far as it may be found neesessary to locate the routes of
580 said railroads through said reserved lands, in which the right of way only shall be granted, subject to the approval of the President of the United States.

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said roads shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"SEC. 3. *And be it further enacted*, That the said lands hereby granted to the State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a con-
581 tinuous length of twenty miles of each of said roads may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not exceeding one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so, from time to time, until said roads are completed, and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same."

And whereas the grant made by the above-recited act of Congress was accepted by the general assembly of the State of Iowa, by
582 an act approved the fourteenth day of July, eighteen hundred and fifty-six, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856," which act of the general assembly of the State of Iowa is in the following words, to wit:

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa*,

That the lands, rights, powers, and priviledges granted to and conferred upon the State of Iowa by the act of Congress entitled 'An act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of railroads in said State,' approved May 15th, 1856, be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress.

"SEC. 2. That so much of the lands, interests, rights, powers, and priviledges as are or may be granted and conferred in pursuance of the act of Congress aforesaid to aid in the construction of a railroad from
583 Burlington, on the Mississippi River, to a point on the Missouri, near the mouth of Platte River, are hereby disposed of, granted, and conferred upon the Burlington and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 3. That so much of the lands, interest, rights, powers, and priviledges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport, via Iowa City and Fort Des Moines, to Council Bluffs, are hereby disposed of, granted, and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 4. That so much of the lands, interest, rights, powers, and priviledges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central air-line railroad near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the State to the Missouri River, are hereby disposed of,
584 granted, and conferred to and upon the Iowa Central Air Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 5. That so much of the lands, interests, rights, powers, and priviledges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri River, to or near Sioux City, with a branch from the mouth of the Tête des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted, & conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

"SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots showing such lines and routes shall be filed in the office of the governor of the State of Iowa, & also in the office of the secretary of state of the State of
585 Iowa. It shall be the duty of the governor, after affixing his official signature, to file such map in the department having the control of the public land in Washington, such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by the said companies within the limits and along any part of the line aforesaid, the governor shall, from time to time, appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents, and the costs, expenses, and

charges attendant upon, and occasioned by, making such selections shall be fixed, regulated, paid, and borne by each of said railroad companies respectively, upon and for its own line.

"SEC. 7. The Iowa Central Air Line Railroad Company shall furnish, equip, and operate the branch of their railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with
586 their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any prefrence to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch of their railroad.

"SEC. 8. The grants aforesaid are made to each of said companies respectively upon the express condition that, in case either of such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then, and in that case, it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time aforesaid.

"SEC. 9. The roads aforesaid shall be constructed upon a guage
587 with a width of four feet eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads; and when the roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other railroad company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads recieving the benefit of this act, to furnish all proper and reasonable facilities, and to join such other company in making all neesessary crossings, turn-outs, sideings, and switches, and other conveniences neesessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefited by this act or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

"SEC. 10. All persons who, at the time the said grant was made,
588 held valid claims, by actual occupation and improvement, upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

"SEC. 11. Any person wishing to avail himself of the provisions of this act shall, within three months of the passage thereof, file his application for that purpose with the judge of the county where such lands may be situate, and shall prove to the satisfaction of said judge that his claim is valid, and that the same existed at the time said grant was made; and, upon such proof being made, such judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder, or his bona fide assignee, to enter such land at the rate of two dollars and fifty cents per acre: *Provided*, That no person, claimant or assignee of a claim, shall be entitled to more than one hundred and sixty acres under this act: *And provided further*, That the person

asserting the claim, whether as claimant or assignee, shall file his affidavit that he has not, either directly or indirectly, received the benefits of the provisions of this act. Before any rights shall be ac-
589 quired under such certificate, a copy of the same, together with the evidence, shall be served on the secretary of the company interested, and such company shall have the right of appeal from the decision of such judge to the district court, in the same manner as appeals are taken from the decisions of a justice of the peace, at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the supreme court by either party, in the same manner as appeals in other cases.

"SEC. 12. Such certificate, on being filed with the secretary of the company upon whose line of road said lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the posession of said land until the tittle shall become vested in the company, upon payment thereafter to the treasurer of the company for said land, at the price above designated, such person shall receive from the secretary of the company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of
590 way and station grounds as may be actually neesessary for the uses of the company.

"SEC. 13. The said companies shall each severally assent to and accept the provisions of this act by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the secretary of state, and be by the secretary recorded in the book by him kept for the recording of the articles of association.

"SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may, from time to time, be enacted and provided for by the general assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

"SEC. 15. It shall be the duty of the companies receiving the benefit of this act, to make a regular annual report of their proceedings, at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the secretary of state.

591 "SEC. 16. *Be it further enacted*, That any of the companies accepting the grants of lands under this act shall take the same with the conditions imposed and incumbrances specified in this act, and shall, in no event, have any claim or recourse whatever upon the State of Iowa for a misapplication of said grant, incumbrances, or conditions in this act imposed.

"SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter and Iowa City Republican."

And whereas the general assembly of the State of Iowa, for the purpose of carrying out and facilitating the objects of the grants made by the above-recited acts, passed a supplementary act, which was approved the twenty-eighth day of January, eighteen hundred and fifty-seven, and is in the following words, to wit:

"SECTION 1. *Be it enacted by the general assembly of the State of Iowa*, That the said companies may make such disposition of their property,

real, personal, and mixed, and of the lands granted by the act to which this is a supplement, by mortgage or deed of trust, as may be
592 deemed proper, for the purpose of securing any amount of construction bonds neesessary for the completion of such roads, which may bear such rate of interest, not exceeding ten per cent. per annum, and may sell the same for the best price that can be procured. Said companies, nor either of them, shall ever be allowed to plead that such bonds are usurious or invalid: *Provided*, That the moneys realized from the sale of the bonds aforesaid shall be applied exclusively to the construction and equipment of said roads.

"SECTION 2. Any mortgage or deed of trust made upon the lands, roads, or other property of either, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock. And the purchasers, under a trustees' sale or a forecloseure of mortgage, shall have and enjoy all the rights of a purchaser on execution sale: *Provided further*, That nothing contained in this act shall be so construed as in any manner to interfere with, change, or modify the rights of this State or of the United States to any lands granted by Congress to this State, and by this State to certain railroad com-
593 panies therein, as a security for the completion of said roads, or to transfer any right in said lands otherwise than as subject to all the conditions imposed by the grant made by the United States to this State, and by the grant by this State to said companies, or by either of said grants: *And provided further*, That the faith of the State is in no way pledged for the payment of said bonds.

"SECTION 3. Any mortgage or trust deed made as before mentioned shall be recorded in the office of the recorder of each county through which said road runs, or wherein it owns or holds lands, and shall be notice to all the world of the rights of all parties under the same.

"SECTION 4. This act shall take effect from and after its publication in the Iowa Capital Reporter and the Iowa City Republican."

And whereas the party of the first part, for the purpose of raising funds from time to time for the construction and completion of the portion of railroad hereinafter described, and the payment of the neesessary expenditures for that purpose, proposes to execute and deliver to the parties of the second part its construction bonds or obligations,
594 in pursuance of the provisions of the last above-recited act of the general assembly of the State of Iowa, approved the twenty-eighth day of January, 1857, and thereby to become indebted to various persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations, in the sum of seven millions of dollars, lawful money of the United States, secured to be paid by seven thousand construction bonds or obligations of said company, of and for the sum of one thousand dollars each, making in the whole the said sum of seven millions of dollars, to be issued and secured by the terms and conditions of this instrument, each of which bonds shall provide for the payment unto the said persons, bodies politic or corporate, who may become the holders thereof, the sum of one thousand dollars, on the eighth day of May, eighteen hundred and seventy-seven, and also for the interest on the same at the rate of seven per cent. per annum, payable on the eighth day of November and May ensuing the date of said bonds, until the principal sums named therein respectively shall be paid and satisfied, according to the tenor thereof, each of the said bonds to be authenticated by a certificate signed by the said trustees, and to be in the
595 following form, viz:

UNITED STATES OF AMERICA, *State of Iowa:*

No. $1,000.

Mississippi and Missouri Railroad Company.—Construction bond.—Secured by mortgage on land grant and railroad.—Length of road mortgaged, 257 miles.

The Mississippi and Missouri Railroad Company acknowledge themselves to owe to Clark Durant, or bearer, one thousand dollars, which sum said company promise to pay to the said Clark Durant, or to the holder hereof, at their office in the city of New York, on the eighth day of May, 1877, and also interest thereon at the rate of seven per cent. per annum, semi-annually, on the eighth day of each November and May ensuing the date hereof, until the said principal sum shall be paid, on presentation of the annexed interest warrants at the office of the company in the city of New York.

596 The payment of the construction bonds is secured by a deed of trust or mortgage upon the railroad of the company, and upon the lands granted to aid in its construction, as specified in said deed of trust, or mortgage, in the annexed certificate of the trustees.

But the company reserve the right to purchase this obligation at any time, by agreement with the holder, or to redeem the same at the par value thereof, on any of the days specified for the payment of interest, by advertising their intention so to do in two newspapers published in the city of New York, and one published in the city of London, at least twelve months previous to the day when said bonds are to be redeemed.

The numbers of the bonds to be called in to be determined by lot.

In testimony whereof the said company have hereunto caused to be affixed their corporate seal, and these presents to be subscribed by their president and treasurer, this eighth day of May, 1857.

President.
Treasurer.

597 The undersigned trustees do hereby certify that the Mississippi and Missouri Railroad Company have executed to us a deed of trust, or mortgage, purporting to convey their road and equipments, and all appurtenances thereto, from the city of Iowa City to the City of Council Bluffs, and also all the right, title, and interest which the said company now have or shall hereafter acquire, in and to all lands of the United States, granted by act of Congress approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the Mississippi and Missouri Railroad Company, as specified in the said instrument, in trust for the benefit of the holders of their bonds, of similar tenor as the foregoing, issued and to be issued to an amount not exceeding in all seven millions of dollars, with power to take posession of said railroad, its equipments and appurtenances, to sell or use the same, or any part thereof, in case of a default in paying the interest or principal of said bonds, or any of them, and with power to sell the lands so conveyed, and apply the proceeds to the payment of said bonds, and that the foregoing is one of the several bonds described in and secured

598 by said deed, and that we have caused the said deed to be recorded in the several counties through which the said road passes, and in which the said lands are situated.

Trustees.

Now, therefore, this indenture witnesseth that the said party of the first part, for securing the payment of the sums of money mentioned in the said construction bonds or obligations, and the interest thereon, and also for and in consideration of the sum of one dollar in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, and confirmed, and by these presents does grant, bargain, sell, convey, and confirm unto the said parties of the second part, and to their successors, who may be appointed or selected in the manner and according to the conditions hereinafter set forth, all and singular the roadway, stations, depot lands, and other lands appurtenant to said railroad, now owned or hereafter to be acquired by said party of the first part, constituting or belonging to the railroad of said party of the first part, extending from Iowa City in the State of Iowa to Council Bluffs on the Missouri River, being
599 a part of the railroad of said company, extending from the city of Davenport, on the Mississippi River, to said Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, or implements whatever, appurtenant to the above described division of said railroad, and all the franchises, rights, and priviledges appurtenant to said division, now existing or hereafter to be acquired.

Also all right, title, interest, claim, or demand which the said party of the first part now has or shall hereafter acquire in or to all public lands of the United States granted by the above-recited act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of said State by the above-recited act, approved July 14th, 1856, to the said Mississippi and Missouri Railroad Company, the party of the first part; subject, however, to the terms and conditions of the above-recited act of Congress, and of the above-recited acts of the general assembly of the State of Iowa, with all the estate, right, title, and interest, property and posession, claim and demand whatever, at law or in equity, of the said party of the first part, in and to the same, and each and
600 every part and parcel thereof, excepting, saving, and reserving to the party of the first part all lands now owned or hereafter to be acquired by said first party, which may not be included in the said grant of public land from the United States, and may not be neeessary for the uses and purposes of said railroad, and the depots and right of way thereof.

To have and to hold all and singular the lands hereby granted or intended to be granted, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, or to the survivor of them, and their successors appointed or elected in manner hereinafter provided, for the uses and purposes, and upon the trusts, terms, and conditions in this indenture set forth and declared.

Provided, always, and these presents are upon the express condition, that if the said party of the first part shall well and truly pay, or cause to be paid, to the holders of the said construction bonds and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as hereinbefore provided, according to the true
601 intent & meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and interest in any and all property hereby conveyed to the parties of the second part, not then disposed of by them, under the powers hereby conferred upon them, shall revert to and vest in the party of the first part.

This indenture further witnesseth that these presents, and the said construction bonds or obligations, are made, executed, and delivered upon the terms, conditions, and agreements following, that is to say—

First. That the actual posession, management, use, and control of said division of railroad and appurtenances shall be and remain with the party of the first part, without molestation or interference of the parties of the second part, so long as the said construction bonds or obligations shall remain without default or forfeiture, and said party of the first part shall perform and keep the stipulations thereof.

602 Second. It is agreed that all the construction bonds which shall be executed and issued by the party of the first part, under the provisions of this indenture, shall be delivered to the parties of the second part, to be countersigned by them as trustees under this instrument; and that said bonds when so delivered and perfected may be sold or disposed of by the parties of the first part, and the avails thereof shall be applied to the construction of said road, according to the terms of this instrument.

Third. The avails of the sales of said construction bonds shall be applied to the payment of the expenditures for the construction of the said division of railroad in manner following, to wit:

The said party of the first part will make contracts for the construction of said road, and for materials to be used therein; and whenever payments shall become due thereon to parties executing the same for work actually done, or materials actually furnished, and the quantity, quality, and cost of such work or materials shall be certified by the chief engineer of said railroad company, the said payment shall be

603 made out of any funds arising from the sales of said construction bonds.

It is further agreed between the parties hereto, that all the lands granted by the act of Congress above recited to the State of Iowa, and by the above-recited act of the general assembly of said State to the party of the first part, shall be under the sole and exclusive management and control of the said party of the first part, who shall have full power and authority to make contracts for the sale of the same at such price, on such credit, or terms of payment, and such other conditions as shall be agreed on by the parties to this indenture, and as shall seem to said parties best calculated to secure the payment in full of all the construction bonds issued as hereinbefore provided; but no title to any tract of land, contracted to be sold by the said party of the first part, shall be given until the whole purchase-money of said tract shall be paid to said parties of the second part in cash or construction bonds.

And for this purpose it is agreed that the parties to this indent-

604 ure shall cause all such lands, as they shall from time to time become subject to sale, to be carefully examined and surveyed, & shall affix to each tract or parcel such a price as in their judgment shall be most judicious, having in view the interests of all parties; and said lands shall be and remain at all times thereafter open for sale to any person who may desire to purchase and pay therefor, the prices being, nevertheless, at times subject to revision and alteration by the said parties; provided, that the party of the first part may reserve from sale any lands neesessary for depot grounds or other purposes connected with the operations of the railroad.

The purchaser shall at all times be at liberty to pay for any lands purchased by him in the aforesaid construction bonds at par; and when any tract or parcel of said lands shall have been purchased and paid for, either in bonds or cash, as hereinbefore provided, the same shall be con-

veyed by the parties to this indenture to the purchaser in fee simple, and shall by such conveyance be absolutely and forever released from any and all lien or incumbrance, for or on account of said bonds,
605 or any other debt or obligation of said party of the first part.

The parties of the second part shall and will cancel and discharge each and every construction bond and obligation, and the interest warrants thereon, which they may recieve in payment for land, or by purchase, by defacing the seal of the corporation, perforating the signatures of the president and treasurer, and drawing lines across each of the interest warrants on reciept thereof. And all construction bonds recieved in payment for lands as aforesaid shall, when so cancelled, be delivered to the party of the first part.

It is hereby agreed by the parties to this indenture that a portion, not exceeding five per cent. of the avails of the sales of the lands conveyed to the parties of the second part by this instrument, may be appropriated to the payment of the neesessary contingent expenses, in examining, surveying, and selling said lands.

It is further agreed that the parties of the second part, after appropriating the five per cent. above mentioned to the purpose specified,
606 shall apply all the residue and remainder of all sales made by them of lands hereby conveyed to the sole and exclusive purpose of the payment of all the construction bonds issued under and in conformity to the terms of this indenture. And for this purpose all such avails of sales shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled so long as such purchases can be made at par; and whenever such bonds cannot be purchased at that rate, said parties of the second part shall advertise in two newspapers published in the city of New York, and one published in the city of London, giving notice of their readiness to redeem a certain amount of said bonds at par, specifying the amount and numbers of the bonds they propose to redeem; which publication shall be at least twelve months previous to the day when said bonds shall be redeemed. And after the time limited in such advertisement, interest shall cease to accrue on the bond or bonds thus specified, and the said parties
607 of the second part shall redeem the same whenever presented at the rate aforesaid, but without further interest.

This indenture further witnesseth that the said party of the first part doth hereby covenant and agree to pay to the holders of said construction bonds, respectively, the said principal sums of money therein mentioned.

If any default shall be made in the payment of either of principal or interest on any of said bonds for sixty days after demand, at the place of payment when the same becomes due, then the said parties of the second part may, on being requested by the holders of at least one hundred thousand dollars of such bonds, enter into and take posession of said division of railroad and all its appurtenances, and all the property conveyed by this deed.

And in case said parties of the second part shall take posession of the said division of railroad, they shall have full power to operate the same in such manner as in their judgment will best secure the interests of all parties. If said default shall continue for one year from the time
608 of such default and refusal, the principal sum of such bonds shall become due & payable. The said parties of the second part may then sell said road or property, or so much thereof as shall be neesessary, at public sale; provided that at least six months' previous notice of the time & place of such sale shall have been given in at least

one newspaper in the city of New York and one in the city of Davenport. In case of such sale it shall be the duty of the parties of the second part to make, execute, and deliver a conveyance of the said road, and any other property thus sold, which shall convey to the purchaser all the rights and priviledges of the said party of the first part in and to the property thus sold, to the same extent as the same shall have been previously enjoyed and held by the said party of the first part.

Said parties of the second part shall, after paying the expenses of the forecloseure and sale, apply the proceeds to the payment of said construction bonds and interest warrants; and, after the payment of all such bonds and expenses, the remainder of the proceeds of the
609 sale, if any, shall be paid to the said party of the first part.

And the said company do further covenant with said trustees and their successors in said trust to make, execute, and deliver all and singular such further assurances and instruments as shall, from time to time, be necessary, and as the said trustees or their counsel shall reasonably advise or require for the better effectuating the objects and purposes of these presents, and of making them embrace at law said division of railroad, and the property and effects so expressed to be mortgaged, or intended so to be, and to be hereafter acquired for the necessary use of said division of said railroad.

In case a vacancy shall happen in the number of trustees hereinbefore mentioned, as parties of the second part in this indenture, the remaining trustee shall, while said vacancy exists, have all the rights, exercise all the powers, and discharge all the duties devolving on the said trustees by this instrument. But as soon as it conveniently may be done, such vacancy shall be filled by the nomination by the re-
610 maining trustee of some proper person to fill such vacancy; which nomination shall be submitted to the board of directors of said company, and, if approved by them, the person so nominated and approved shall at once become a trustee under this instrument. If said nomination is not approved, another person shall be nominated by said remaining trustee, and so on until three nominations shall have been made. But if, after three nominations, neither shall be approved by said board, said vacancy shall be filled by a committee of three persons selected, one by said remaining trustee, one by said board of directors, and a third by the two thus selected, and the person appointed trustee by a majority of the committee shall be and remain a trustee under this instrument; and the person regularly appointed a trustee to fill a vacancy in either of the forms above specified shall, from and after his said appointment, become vested with the same powers, rights, and interests, and charged with the duties and responsibilities as if
611 he had been one of the original trustees parties of the second part named in and executing this instrument.

It is further agreed by and between the parties hereto, that whenever all the construction bonds which shall have been executed and issued by the party of the first part, under and in conformity to the provisions of this indenture, shall, with the interest thereon, have been fully paid, together with all the expenses incurred by the parties of the second part, in the execution of the trust herein and hereby confided to them, the parties of the second part, and their successors, will reconvey to the party of the first part all and singular, the railroad, its premises & appurtenances, and all other property, real or personal, then in the hands of the said parties of the second part, portion of the property hereby conveyed, or the avails thereof, and not before that time sold, or disposed of, in the execution of the trust hereby created.

And it is hereby mutually agreed by and between the parties hereto,

that the said parties of the second part, their heirs, executors, and
612 administrators, shall not be answerable for the acts, omissions, or defaults of each other.

In case the parties of the second part shall at any time have any trust-moneys on hand, derived either from the sale of construction bonds, or the lands hereby conveyed, which will not be required to meet any immediate liabilities of the company, to which said moneys are devoted, the said moneys shall be deposited on interest, with some safe bank or trust company in the city of New York, subject to be drawn by cheques signed by such one of the trustees as they may designate, and the treasurer of the company.

All the books of the railroad company and the trustees relating to the lands and division of railroad hereby conveyed shall be mutually open to the inspection of each other.

It is hereby declared by the parties to this indenture, that by incorporating with it the above-recited act of Congress, and the acts of the general assembly of the State of Iowa, their intention is to make the provisions of said acts, so far as they are applicable, a part of
613 this instrument, and to carry out faithfully and strictly the said provisions in all that concerns the sale & disposal of the public lands, and the construction of the division of railroad hereby conveyed to the parties of the second part.

In witness whereof, the said railroad company has caused these presents to be executed in reduplicates to the number of seventeen, and to be signed by the president and treasurer, and the seal of said company to be hereto affixed, the day and year first above written.

{ L. S. M. & M. R. R. CO. SEAL. } JOHN A. DIX, *President.*
A. C. FLAGG, *Treasurer.*

STATE OF NEW YORK,
New York City and County, ss:

I, Joseph C. Lawrence, a commissioner in and for the State of New York, duly appointed and commissioned by the governor of the State of Iowa, to take the acknowledgment and proof of deeds and other instruments of writing under seal, to be used or recorded in said State of Iowa, also a notary public in and for said State of New York, duly appointed
614 & commissioned by the governor thereof, and dwelling in the city of New York, do hereby certify that on the twentieth day of May, A. D. 1857, before me personally came John A. Dix, president, and A. C. Flagg, treasurer of the Mississippi and Missouri Railroad Company, to me personally known to be the persons described in, and who executed the within indenture of mortgage, and severally acknowledged that they executed the same as their free act and deed in their respective capacities as president and treasurer of the said Mississippi and Missouri Railroad Company, and the said A. C. Flagg, treasurer of the said company, being by me duly sworn, did depose and say that he knows the corporate seal of the said company, and that the seal affixed to the within indenture of mortgage, is such corporate seal, and was so affixed by orderof the board of directors of said company, and by like authority he, and the said John A. Dix, executed the same as the act and deed of the said company.

{ L. S. COMMISSIONER FOR THE STATE OF IOWA IN N. Y. } Given under my hand & official seals the day and year above written.

{ L. S. NOTARY PUBLIC N. YORK. }

JOSEPH C. LAWRENCE,
Commissioner for the State of Iowa, in & for the State of New York and Notary Public of the State of New York.

615 Endorsed:

STATE OF IOWA, *Scott County, ss:*

Left for record Mar. 20th, 1866, at 2½ o'clock p. m., & recorded in book W, of mortgages, pages 558–9–560, 1, 2, 3, 4, 5, 6, 7, 8, 9, 570, 1, 2, 3, 4, 575.

JAMES THORINGTON, *Recorder.*
JNO. WEB. COLLINS, *Dep. Rec.*

Recieved and filed for record the 9th day of June, A. D. 1857, at ten o'clock p. m., and recorded in book 2, page 478.

THOS. HUGHES,
County Recorder, Johnson County, Iowa.

Cross-bill endorsed: Filed May 9, 1866.

WOODWARD, *Clerk.*

616 On the same day, to wit, on the ninth day of May, A. D. 1866, came the Mississippi and Missouri Railroad Company, and by C. Baldwin, its solicitor, filed in said clerk's office an answer to the cross-bill of Edward W. Dunham, which answer is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

EDWARD W. DUNHAM
versus
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al. } In equity.

The seperate answer of the Mississippi and Missouri Railroad Company, to the complainants' cross-bill, exhibited in this court in the case of Thomas C. Durant, and others, against the said Mississippi and Missouri Railroad Company and others.

This defendant reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in said complainants' bill contained, for answer thereto, or such parts thereof
617 as this respondent is advised is material to be answered unto.

This respondent admits its existence as a corporation with powers to construct a railroad and branch, and to borrow money, mortgage its property to secure the repayment of the same in manner and form as stated and set out in complainants' cross-bill; admits that it has built a part of its main line, via Iowa City to Kellogg, in Jasper County, Iowa, and also a branch of the main line, via Muscatine to Washington, in Washington County, Iowa, and that it is in posession and operating said road and branch; and admits that it is the owner of the rolling-stock, machine shops, machinery, and other property as alleged in said cross-bill; admits that the road was built in three divisions as stated in said cross-bill.

Further answering respondent admits that it did on the first day of July, 1855, make, execute, and deliver the indenture of mortgage to said complainant, and that it is correctly recited in said bill, and was so executed & delivered to secure the repayment of money borrowed by respondent, for which respondent issued bonds of one thousand
618 dollars each, bearing interest at the rate of seven per cent., payable semi-annually, and the principal due and payable on the first day of July, 1875, and that said mortgage covers the first division of said company's railroad from Davenport to Iowa City and Muscatine, and the property belonging to said division of said road.

Admits that the mortgage set out, in "Exhibit A" of complainant's bill is a true copy of said mortgage.

Respondent, further answering said cross-bill, admits that it issued an aggregate amount of one million of dollars in bonds of one thousand dollars each, dated the 1st of July, A. D. 1855, and that they are known as first mortgage bonds on the first division of said company's railway and appurtenances, and that said bonds are now outstanding and unpaid in the hands of divers persons.

Respondent admits that the condition of said mortgage has been broken, and that said company is in default in consequence of not having paid the interest on said bonds as stated in said cross-bill.

619 Admits that there is a large amount of unpaid interest due said bondholders, and respondent, by its secretary, attaches to this answer an exhibit stating the principal and past due interest on said bonds up to the 8th of May, 1866, and designates said exhibit as "A," and makes it a part of this answer.

Respondent admits that owing to its default in not paying the interest on said bonds, the principal has become due, and admits that said interest was demanded, and that the holders of a majority in amount of said bonds have requested and directed complainant to enforce and foreclose said mortgage.

This respondent admits that certain income bonds were issued by the Mississippi and Missouri Railroad Company for funded interest cupons upon the said bonds, due on and prior to the first day of January, 1864, amounting to the sum of $216,000, and that there was other interest due prior to the first of January, 1865, a full statement of which respondent discloses in said Exhibit A.

620 Respondent also admits that some of the holders of said past due cupons, under an agreement with said railroad company, so provided as to retain their lien under said mortgage, as stated and set forth in said cross-bill, and that such bondholders have elected to take back their cupons.

And this respondent, further answering said cross bill, says that it is true the said Mississippi and Missouri Railroad Company, on or about the first day of July, A. D. 1856, was desirous of borrowing a further sum of money by issuing a series of second mortgage bonds to the amount of $400,000 dollars on its first division of said road, and that it did on or about the said first day of July, 1856, make, execute, and deliver unto said complainants another indenture of mortgage with recitations, conditions, and covenants as stated in complainant's bill of complaint to secure the sum of four hundred thousand dollars, and interest thereon, at the rate of eight per cent. per annum, payable semi-annually on the first of July and January in each year, until the first of July, 1876, at which time the principal of said bonds fell due, and that said last-

621 named mortgage covers the first division of said railroad, together with the rolling stock and all property belonging to said division of said road, and that said Exhibit "B" is a true copy of the original second mortgage on said first division of said road, and the appurtenances thereunto belonging.

Respondent admits that the condition of said mortgage has been broken, and said company is in default, in that it failed to pay the interested in manner as covenanted for in said mortgage; and it admits that it has paid no interest on said bonds since the first day of January, 1865, and also admits that said interest has been demanded of the officers of said company as stated in said cross-bill, and also admits that a majority in amount of said bondholders have requested and directed

the said Edward W. Dunham, as trustee in said mortgage, to enforce payment of the same as stated in said cross-bill.

Respondent admits that it has been in posession of said road from the commencement of its construction up to the present time, and has recieved the earnings and profits thereof, and admits that it has not applied all its earnings to the payment of said interest,
622 but avers that after paying neesessary expenses, repairs, &c., the said road has not earned enough to pay the interest on the indebtedness of said company; and respondent admits that said company is insolvent. Respondent sets out, in Exhibit "B" hereto attached, the amount due & secured by said last-mentioned mortgage.

Further answering said cross-bill of complainant, this respondent admits that the said Mississippi and Missouri Railroad Company did, on or about the first day of July, A. D. 1856, make, execute, and deliver a certain other indenture of mortgage to the said complainant, as trustee, to secure the repayment of money, which respondent wished to borrow, to aid in the construction of the third or Oskaloosa division of its road from Muscatine to Oskaloosa, in Iowa, and that "Exhibit C" of said complainant's cross-bill is a true copy of the original mortgage so executed and delivered.

And this respondent admits that it did execute a large amount of bonds secured by said mortgage, and that the same are now outstanding and unpaid, and that the aggregate sum so issued is
623 about five hundred and ninety thousand dollars, and dated the same date as said mortgage, to wit, the first day of July, A. D. 1856, and are known as Oskaloosa division bonds of said company's railroad, and that said bonds are made payable on the first day of July, 1876, and that said bonds bear interest at the rate of seven per cent. per annum, payable semi-annually; admits that said road is only completed to Washington, in Washington County, Iowa.

Respondent admits that the conditions of said mortgage have been broken, and said company is in default, not having paid said interest when due, and demanded as alleged in said bill.

Respondent admits that there is a large amount of past due unpaid interest now due to said bondholders, the exact amount of which said principal and interest respondent, by its secretary, herewith shows (as near as it can) by an exhibit marked "C," attached to this answer and made a part hereof, and hereby referred to for greater certainty.

624 Respondent admits the contitional funding of a portion of said cupons, and that neither the bonds issued therefor, or the interest thereon has been paid, and that the holders are entitled to the original lien of their said interest cupons, the amount of which, and the interest thereon, is set forth and stated in said Exhibit "C" hereto.

Respondent admits that by the terms of said mortgage and bonds the whole principal and interest is now due and payable, and that complainant is entitled to a foreclosure of said mortgage as prayed in and by said cross-bill.

Respondent admits that it has not applied all the earnings of said branch road to payment of interest on said bonds.

Respondent herewith discloses a list of lands and town lots belonging to said first division of said railroad which were purchased by said company for right of way, stone quarry, and for ballasting said road, which property was and is neesessary for the use of said road. A list and description of said lands and lots are described and set forth in Exhibit "D," and made a part of this answer.

625 Respondent also sets out in an exhibit, marked Exhibit "E," a list and description of lands belonging to the Oskaloosa division of said road, purchased by said railroad company for the construction and operating of said railroad, and necessary therefor.

Respondents also exhibit a statement of equipments or rolling stock belonging to said first division of said company's railroad, and mark it Exhibit "F," and attach the same hereto.

Respondents having fully answered said cross-bill, pray to be dismissed hence, &c.

The Mississippi and Missouri Railroad Company, by its secretary and seal.

{ M. & M. R. R. CO. SEAL. } EBENEZER COOK, *Secretary.*

C. BALDWIN, *Solicitor for M. & M. R. R. Co.*

626 "EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the 1st mortgage 1st division bonds of the Mississippi and Missouri Railroad Company.*

Principal		1,000,000 00
Income bonds given for interest	216,000 00	
Interest on do. from January 1, 1865, @ 7 %	20,496 00	
		236,496 00
Scrip issued for cupons convertible	14,513 28	
Interest on do. from July 1, 1862, @ 7 %	3,916 79	
		18,430 25
Past due cupons convertible	2,900 93	
Int. on do. from July 1, 1862, @ 6 %	671 06	
		2,571 99
Past due cupons of July, 1864, & January 1865	5,392 50	
Int. on do. from January 1, 1865, @ 6 %	440 40	
		5,832 90
Int. on principal due July 1, 1865	35,000 00	
Int. on last am't from July 1, 1865, @ 6 %	1,796 55	
		36,796 55
Int. on principal due Jan. 1, 1866	35,000 00	
Int. on last am't from Jan'y 1, 1866, @ 6 %	746 55	
		35,746 55
Principal	$1,000,000 00	
Interest	335,874 24	
		1,335,874 24

627 "EXHIBIT B."—*Statement of the amount due for principal and interest on the eighth day of May, 1866, on the second mortgage 1st division bonds of the Mississippi and Missouri Railroad Company.*

Principal		400,000 00
Past due cupons convertible	840 00	
Int. on do. from July 1, 1862, @ at 6 %	194 25	
		1,034 25
Int. on principal due July 1, 1865, @ 8 %	16,000 00	
Int. on last am't from July 1, 1865, @ 6 %	820 00	
		16,820 00

Int. on principal due Jan'y 1, 1866, @ 8 % ...	16,000 00	
Int. on last am't from Jan'y 1, 1866, @ 6 % ...	340 00	
		16,340 00
Principal	$400,000 00	
Interest	34,194 25	
		434,194 25

628 "EXHIBIT C."—*Statement of the amount due for principal and interest on the eighth day of May, 1866, on the first mortgage Oskaloosa division bonds of the Mississippi and Missouri Railroad Company.*

Principal		590,000 00
Income bonds given for interest	83,000 00	
Int. on do. from Jan'y 1st, 1865, @ 7 %	2,065 45	
		85,065 45
Scrip issued for cupons convertible	346 33	
Int. on do. from July 1, 1862, @ 6 %	80 11	
		426 44
Past due cupons convertible	4,992 37	
Int. on do. from July 1, 1862	1,154 88	
		6,147 25
Past due cupons of July, 1864, & Jan'y, 1865.	1,085 00	
Int. on do. from Jan'y 1, 1865, @ 6 %	88 65	
		1,173 65
Int. on principal due July 1, 1865	20,650 00	
Int. on last am't from July 1, 1865, @ 6 % ...	1,059 97	
		21,709 97
Int. on principal due Jan'y 1, 1866	20,650 00	
Int. on last am't from Jan'y 1, 1866, @ 6 % ..	440 47	
		21,090 47
Principal	$590,000 00	
Interest	135,613 23	
		725,613 23

629 "EXHIBIT D."—*List of lands and city lots belonging to the first division of the Mississippi and Missouri railroad, purchased for depot purposes, gravel pits, sand bank, stone quarries, &c., the lands and lots being required for use in constructing and operating the railroad of said company, and which are covered by the mortgages made by the company.*

Lot 3,	block	64	Muscatine, Muscatine County, for depot purposes.
" 9,	"	67	
" 2,	"	110	
" 4 & 5,	"	7	
W. ½ of " 3,	"	7	

All that part of the east 51 $\frac{92}{100}$ acres of the west 110 $\frac{92}{100}$ acres of the N.W. ¼ sec. 10, township 78, range 2 west, which lies north of the railroad track, Muscatine County—36 $\frac{38}{100}$ acres, sand bank for ballasting.

The south sixty acres of the west ½ of the S.E. ¼ section six, township seventy-eight, range two west, Muscatine County—60 acres, stone quarry.

"EXHIBIT E."—*List of lands belonging to the Oskaloosa division*
630 *of the Mississippi and Missouri railroad, purchased for gravel pits, the said land being required for use in constructing and operating the said railroad of the said Mississippi and Missouri Railroad Company, and which are covered by the mortgages made by the said company.*

The N. E. ¼ and the S. W. ¼ of the S. W. ¼ of sec. 20, T. 76, R. 2 west—80 acres, Muscatine County.

All of the S. W. ¼ & the W. ½ of the S. E. ¼ of sec. 30, T. 76, range 2 west, which lies north of the railroad track—110 acres, Muscatine County.

"EXHIBIT F."—*Statement of equipments belonging & appurtenant to the 1st division Mississippi & Missouri railroad.*

10 locomotives, to wit:

The Iowa.	The Oskaloosa	The A. C. Flagg.
The Davenport.	" Des Moines.	" Le Claire.
The Nebraska.	" Samson.	" John A. Dix.
The Muscatine.		

50 box freight cars, numbered from 2 to 100, inclusive.
10 platform cars, numbered from 1 to 19, inclusive.
6 passenger cars, numbered from 1 to 6, inclusive.
5 hand cars; 3 truck cars.
2 baggage cars, Nos. 1 & 2.
One or two of the box-freight cars have been converted into caboose cars.

Endorsed: Filed May 9th, 1866.

WOODWARD, *Clerk.*

631 On the same day, to wit, the ninth day of May, A. D. 1866, came the Mississippi and Missouri Railroad Company, by C. Baldwin, its solicitor, and filed in said clerk's office answer to the cross-bill of Thomas E. Walker, and Franklin Haven, which answer is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Iowa, ss:

THOMAS E. WALKER AND FRANKLIN HAVEN
versus
THE MISSISSIPPI AND MISSOURI RAILROAD Company and others. } In equity.

The seperate answer of the said Mississippi and Missouri Railroad Company to the complainant's cross bill exhibited in this court in the case of Thomas C. Durant and others against the said Mississippi and Missouri Railroad Company and others.

This defendant reserving all benefit and advantage of exception which may be taken to the many errors & other imperfections in
632 said complainant's bill contained, for answer thereto, or such parts thereof as this respondent is advised is material to be answered unto, says, this respondent admits its existence as a corporation, with powers to construct a railroad and branch, and to borrow

money, mortgage its property to secure the repayment of the same, in manner and form as stated and set out in complainant's cross-bill, and it admits the grant of land by the United States to the State of Iowa, and by the said State of Iowa to this defendant, to aid in the construction of the main line of its road from Davenport to Council Bluffs in the State of Iowa, and that this respondent did accept such grant, and by virtue thereof became entitled to and accepted large quantities of land.

And this respondent admits that on or about the 8th day of May, A.D. 1857, it did issue its bonds of that date for a large amount, in order to raise money to construct and complete the said second division of its road, and to secure the repayment of said money it did make, execute and deliver unto the said Thomas E. Walker and one Curtis B. Raymond, as trustees, the indenture of mortgage set out in said
633 bill, the contents of which are correctly set out in said bill, as well as the covenants of this respondent, and that said mortgage covers the said second division of said railroad, with all property belonging to said division, whether real or personal.

Respondent admits that said series of bonds were called or known as first mortgage construction or land grant bonds, bearing even date with said mortgage, and that said bonds bear interest at the rate of seven per cent., payable semi-annually, and the principal due and payable on the eighth day of May, A.D. 1877.

Respondent admits that it issued the amount charged in said bill of said bonds, to wit, $3,617,000, and that said bonds are held and owned by divers persons.

Admits that since the execution of said mortgage, and the acceptance of said trust by said Walker and Raymond, the said Curtis B. Raymond has resigned his trust and refused to act further in the premises, and that said Franklin Haven has been duly appointed a trustee as successor and in place of said Curtis B. Raymond in the manner provided for in said mortgage, and has accepted the trust.

634 This respondent admits the correctness of the schedule of lands filed by complainants with their bill.

Admits that the condition of said mortgage has been broken, and that said respondent is in default, and has refused and failed to pay to the said bondholders the semi-annual interest as in said bill alleged, and that the same has been demanded.

Respondent admits that there is a large amount of interest in arrear now due, the amount of which respondent fully sets out and declares in an exhibit hereto marked "A," and which respondent makes a part of this his answer, and in and by said exhibit respondent sets out and shows the amount of cupons conditionally funded but not cancelled.

Respondent admits that by the terms of said mortgage, and for the reason that respondent has failed to pay said interest, the principal sums of said bonds have become due and payable, and that complainants are entitled to a foreclosure of said mortgage for principal and unpaid interest.

Respondent admits that it is now, and always has been, in
635 posession of said railroad, and all property belonging to said corporation, and has recieved the earnings of said road.

Respondent admits that it has not applied all the earnings of said road to the payment of interest on bonds issued by this respondent, but avers that it has applied such earnings to the payment of interest, except such an amount as in the opinion of the officers of said road was neeessary for the payment of current expenses, and such repairs

of said road as were deemed necessary for the profit and interest of said corporation and its creditors.

Respondent admits that the accumulating intrest increases the amount of the indebtedness, and admits that it is insolvent.

This respondent further answering, attaches hereto an exhibit marked "B," in which it gives a full statement of the number of locomotive engines and cars owned by and belonging to the said second division of said road, as asked for in the prayer of said bill.

Respondent further answering, attaches hereto an exhibit marked "C," in which it gives a list of lots in Iowa City, and a tract of
636 land in Iowa County, for depot purposes, purchased by the company, and which were and are necessary to the operating the said railroad on the line thereof, although not now used.

This respondent, having fully answered said bill, prays, &c.

{ M. & M. R. R. CO. SEAL. } The Mississippi and Missouri Railroad Company, by its secretary and seal.

EBENEZER COOK, *Secretary.*

C. BALDWIN, *Solicitor for M. & M. R. R. Co.*

"EXHIBIT A."—*Statement of the amount due for principal and interest on the 8th day of May, 1866, on the land grant 1st mortgage bonds of the Mississippi and Missouri Railroad Company.*

Principal			3,617,000 00
Income bonds given for interest	254,000 00		
Int. on do. from Nov. 8, 1864, @ 7 %	26,670 00		
			280,670 00
Scrip issued for cupons convertible	13,870 85		
Int. on do. from Nov. 8, 1862, @ 6 %	2,612 87		
			16,483 72
Past due cupons convertible	17,309 15		
Int. on do. from Nov. 8, 1862, @ 6 %	3,635 02		
			20,944 17
637 Past due cupons of Nov. 8, 1864	35,000 00		
Int. on do. from Nov. 8, 1864, @ 6 %	2,860 00		
			37,860 00
Int. on principal due May 8, 1865	126,595 00		
Int. on last am't from May 8, 1865, @ 6 %	7,595 70		
			134,190 70
Int. on principal due Nov. 8, 1865	126,595 00		
Int. on last am't from Nov. 8, 1865, @ 6 %	3,797 85		
			130,392 85
Principal	$3,617,000 00		
Interest	620,541 00		4,237,392 85

"EXHIBIT B."—*Statement of equipments belonging and appertaining to the Des Moines or land grant division of the Mississippi and Missouri railroad.*

3 locomotives, to wit, the "N. B. Judd," "Iowa City," and "C. W. Durant."

3 passenger cars, Nos. 7, 8, and 9; 40 box freight cars, being all that are numbered above 100.

40 platform cars, being all numbered above 19.

2 baggage cars, Nos. 3 & 4.

20 dirt cars.

20 hand cars.

9 truck cars.

638 "EXHIBIT C."—*List of lands and city lots belonging to the Des Moines or land grant division of the Mississippi and Missouri railroad purchased for depot purposes, the said lands and lots being required for use in operating the said railroad of the Mississippi and Missouri Railroad Company, and which are covered by the mortgages made by said company.*

Lots 1 & 8, block 15
" 1 & 8, " 18
" 3, " 11
" 1, " 22
} Iowa City, Johnson County.

The S. E. ¼ of the N. E. ¼, sec. 12, T. 80, R. 12 west—40 acres, Iowa County.

Endorsed: Filed May 9th, 1866.

WOODWARD, *Clerk.*

639 On this day, to wit, the tenth day of May, A. D. 1866, came the defendant Mark Howard, by his solicitor, James Grant, and filed in said clerk's office an answer to the original bill and amendment of the complainants, and to the cross-bill of Edward W. Dunham, and of Thomas E. Walker, and Franklin Haven; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, John Webber, Mark Howard, et als.
} In equity.—To May term, 1866.

The seperate answer of the said Mark Howard to the original bill and amendment thereto, and also to the cross-bills of Edward W. Dunham, Franklin Haven, and Thomas E. Walker.

This respondent reserving all benefit, &c., for answer to said several bills of complaint now here appears by his solicitor, James Grant,
640 and saith that defendant admits the priority of said mortgages as a lien on the property of said railroad company. Respondent says he recovered judgment in this court in October, 1865, on certain guaranties of the said railroad company; that said complainants in all the said bills are entitled to a forecloseure of their several mortgages, and a decree against this respondent as prayed in their several bills; and this respondent has no objection to a decree in favor of said complainants, reserving all rights to any other relief to which he may be entitled against his co-defendant, the said railroad company.

Wherefore, &c.,

MARK HOWARD.

Solicitor J. GRANT.

Endorsed: Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came the defendant John Webber, by James Grant, his solicitor, and filed in said clerk's office an answer to the original bill and amendment of
641 plaintiffs, and to the cross-bill of Edward W. Dunham, and of

Thomas E. Walker and Franklin Haven; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, John Webber, Mark Howard, et als. } In equity.—To May term, 1866.

The seperate answer of the said John Webber to the original bill and amendment thereto, and also to the cross-bills of Edward W. Dunham, Franklin Haven, and Thomas E. Walker.

This respondent reserving all benefit, &c., for answer to said several bills of complaint now here appears by his solicitor James Grant, and saith:

That respondent, admits the priority of said mortgages as a lien on the property of said railroad company.

Respondent says he recovered a judgment in this court in October, 1865, on certain guaranties of the said railroad company; that
642 said complainants in all the said bills are entitled to a forecloseure of their several mortgages, and a decree against this respondent as prayed in their said bills; and this respondent has no objection to a decree in favor of said complainants, reserving all rights to any other relief which he may be entitled against his co-defendant, the said railroad company.

Wherefore, &c.,

JOHN WEBBER,
By J. GRANT, *Sol'r.*

Endorsed: Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1869, came the plaintiff, by John N. Rogers, their solicitor, and filed in said clerk's office an answer to the cross-bill of Thomas E. Walker and Franklin Haven, which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States for said district.

643 THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas E. Walker, and Franklin Haven, et al. } In chancery.

The seperate answer of the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, junior, to the cross-bill of the said Thomas E. Walker and Franklin Haven, exhibited in the above-entitled cause, wherein these respondents are made defendants.

These respondents reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in the cross-bill of said Thomas E. Walker and Franklin Haven contained, for answer thereto, or such parts thereof as respondents are advised it is material for them to answer, say:

These respondents admit the existence of the said Mississippi & Missouri Railroad Company as a corporation, with power to construct,
644 maintain, and use a railroad and branch, and with full power to borrow money, and to execute mortgages on said roads and other property and franchises of the said company, to secure the repayment of the same; and also that said railroads have been constructed and built as stated and set forth in said cross-bill.

And these respondents admit that on or about the eighth day of May, A. D. 1857, the said railroad company issued its bonds for a large amount; and that on the said eighth day of May, A. D. 1857, the said railroad company made, executed, and delivered unto said Walker, and one Curtis B. Raymond, as trustees, an indenture of mortgage duly signed & sealed, and that the exhibit attached to said cross-bill is a true copy of such indenture of mortgage, and admit that said indenture was executed for the purposes set forth in said cross-bill.

And these respondents admit the grant of land by the United States to the State of Iowa, and by the State of Iowa to said company, as set forth in said cross-bill.

And these respondents admit that by the said indenture the
645 said railroad company conveyed to said Walker and Raymond, in trust, and their successors, the railroad of the said company, extending from Iowa City to Council Bluffs, being part of the said company's railroad, and all the property, real and personal, and appurtenances and franchises belonging to said part or division of said company's railroad, and also all right, title, interest, claim, or demand which the said company then had or might thereafter acquire in or to all public lands of the United States granted to the State of Iowa, and by the State of Iowa to the said company, as set forth and recited in said mortgage and-cross bill, and admit the trusts and covenants in said indenture of mortgage contained, and set forth in said cross-bill; and admit the acknowledgment and record of said indenture, as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds, duly signed and sealed, and secured by the said mortgage; but these respondents are not advised further than by
646 the statement of said cross-bill of the aggregate amount of bonds so issued; wherefore they neither admit nor deny the amount charged in said cross-bill; but these respondents believe and admit that some of such bonds were issued, in bonds of $1,000 each, dated the said eighth day of May, 1857, called or known as first mortgage construction or land grant bonds, and secured by said mortgage, and that by said bonds the said company promised and agreed to pay to the bearers of said bonds, respectively, the sums therein expressed, on the eighth day of May, A. D. 1877, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the eighth day of November and May, ensuing the date thereof, until the principal sum should be paid; and these respondents are advised and believe, that such bonds, to a large amount, are now held and owned by divers persons, as stated in said cross bill.

And these respondents admit the resignation of trust, by the said Raymond, and the substitution of said Franklin Haven in his stead, as set forth in said cross-bill.

And these respondents admit that so far as they are advised, the
647 schedule of lands, filed with said cross-bill, is a correct list, showing the lands owned and claimed by the said railroad company, and covered by the said mortgage.

These respondents having no sufficient knowledge thereof, can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on said bonds when thereto demanded; and these respondents say that they are not advised of the amount of interest unpaid, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the entire principal and interest of said bonds would become due by reason of such default, if such default has been made; and that the said Walker and Haven would in that case be entitled to a forecloseure of their said mortgage for the whole amount of principal & interest thereby secured, and neither admit nor deny that holders of more than one hundred thousand dollars in amount
648 of said bonds have instructed the said Walker and Haven to foreclose their said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents admit that the said mortgage to the said Walker and Haven is prior to the mortgage sought to be forclosed by these respondents in their original bill of complaint, on file in this cause, and superior in lien to these respondents, & said mortgage on the division of said railroad from Iowa City west, and on the public lands granted to said railroad company; but that these respondents are not advised of the amount due upon said mortgage to said Walker and Haven; and these respondents ask that their rights, and that of their cestuis' que trust may be protected by decree of this honorable court.

And these respondents admit that the said Mississippi and Missouri Railroad Company is insolvent and unable to pay its just debts and liabilities.

And these respondents having now fully answered all such parts of said cross-bill as these respondents are advised it is material or
649 necessary for them to make answer unto, pray that they may have relief, as already prayed in their original bill of complaint, and the amendment thereunto filed in this cause; and for such other and further relief as the nature of the case may demand, and to your honors shall seem meet.

THOMAS C. DURANT,
JACOB S. WETMORE,
ROBERT B. MINTURN, JR.,
By JOHN N. ROGERS,
Their Solicitor.

Endorsed: Filed May 10th, 1866.

WOODWARD, *Clerk.*

On the same day, to wit, the tenth day of May, A. D. 1866, came the plaintiffs, by John N. Rogers, their solicitor, & filed in said clerk's office an answer to the cross-bill of Edward W. Dunham; which answer is in the words and figures following, to wit:

THE STATE AND DISTRICT OF IOWA, *ss:*

In the circuit court of the United States for said district.—In chancery

650 THOMAS C. DURANT, ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD COMpany, Edward W. Dunham, et al.

The seperate answer of the said Thomas C. Durant, Jacob S. Wetmore,

and Robert B. Minturn, junior, to the cross-bill of the said Edward W. Dunham, exhibited in the above entitled cause wherein these respondents are made defendants.

These respondents, reserving all benefit and advantage of exception which may be taken to the many errors and other imperfections in the cross-bill of said Edward W. Dunham contained, for answer thereto, or such parts thereof as these respondents are advised it is material for them to answer, say:

These respondents admit that they file their bill for foreclosure of a mortgage executed by the said railroad company, as stated in said cross-bill, & that they amended their said bill, making the said Dunham a defendant thereto.

651 These respondents admit the existence of the said Mississippi and Missouri Railroad Company as a corporation, with powers to construct a railroad and branch, and with full power to borrow money for the purpose of building, maintaining, and operating such railroad; and to execute mortgages, to secure the payment of the money borrowed. Also that the said railroads have been constructed and built as stated and set forth in said cross-bill.

These respondents admit that on the first day of July, A. D. 1855, the said railroad company made, executed, and delivered unto the said Dunham an indenture of mortgage, duly signed and sealed; and that the exhibit attached to said cross-bill, and marked "A," is a true copy of such indenture of mortgage; and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that, by the said indenture, the said railroad company conveyed unto the said Dunham, in trust, the first division of said company's railroad, extending from Davenport to Iowa City,

652 and Muscatine, (a distance of sixty-seven miles,) with all property, real and personal, and appurtenances belonging to said division, as recited in said cross-bill; and admit the trusts and covenants contained in said indenture, as set forth in said cross-bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture, as set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds, duly signed and sealed, & secured by the said mortgage, amounting, as these respondents are advised, to the aggregate of one million dollars, in bonds of one thousand dollars each, dated the said first day of July, A. D. 1855, known as "first mortgage bonds," secured on the first division of said company's railroad, and its appurtenances; and that by said bonds the said company bond itself, and agreed to pay to bearers or holders thereof the sums therein expressed on the first day of July, A. D. 1875, with interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the first days of

653 January and July in each and every year, until the maturity of said bonds.

And these respondents are advised that said bonds, to the amount aforesaid, are now held and owned by divers persons, as stated in said cross-bill.

These respondents, not being advised, can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on its said bonds when thereto demanded. And these respondents say that they are not advised of the amount of interest unpaid on said bonds, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the whole prior principal and interest of said bonds would become due by reason of such default, if such default has been made, and that the said Dunham would, in that case, be entitled to a foreclosure of his said mortgage for the entire amount of principal and interest thereby secured; and neither admit nor
654 deny that the majority of the holders of said bonds has instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents further admit that on the first day of July, A. D. 1856, the said railroad company made, executed, and delivered unto the said Dunham a certain other indenture of mortgage, duly signed and sealed; and that the exhibit attached to said cross-bill and marked "B," is a true copy of such indenture of mortgage, and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that by the said indenture the said railroad company again conveyed unto the said Dunham, in trust, the first division of its said railroad aforesaid, with its appurtenances, and admit the trusts and covenants contained in said indenture as set forth in said cross-bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture as set forth in said cross-bill.

655 These respondents admit that the said railroad company did issue a large number of bonds duly signed and sealed, and secured by the said last-mentioned mortgage, and are advised that the amount of such bonds so issued was in the aggregate the sum of four hundred thousand dollars, in bonds of one thousand dollars each, dated the said first day of July, A. D. 1856, known as "second mortgage sinking fund bonds," secured by such second mortgage on the first division of said company's railroad, and its appurtenances; and that by said bonds the said company bound itself, and agreed to pay to bearers or holders thereof the sums therein expressed on the first day of July, 1876, with interest thereon at the rate of eight per cent. per annum, payable semi-annually on the first days of January and July in each and every year until the maturity of said bonds.

And these respondents are advised that said bonds to the amount aforesaid are now held and owned by divers persons as stated in said cross-bill.

These respondents not being fully advised thereof, can neither
656 admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in def ult, in that the said company has failed to pay the interest on said bonds when thereto demanded; and these respondents say that they are not advised of the amount of interest unpaid on said bonds, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the whole principal and interest of said bonds would become due by reason of such default, if such default has been made, and that said Dunham would in that case be entitled to a foreclosure of his said mortgage for the entire amount of principal and interest thereby secured; and that respondents neither admit nor deny that the majority of the holders of said bonds have instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereon.

And these respondents admit that on the first day of July, A. D. 1856, the said railroad company made, executed, and delivered unto

657 the said Dunham a certain other indenture of mortgage duly signed and sealed, and that the exhibit attached to said cross-bill and marked "C" is a true copy of such indenture of mortgage; and admit that said indenture was executed for the purposes set forth in said cross-bill.

These respondents admit that by the said indenture the said railroad company conveyed unto the said Dunham, in trust, the Oskaloosa division of said company's railroad, extending from Muscatine to Oskaloosa, with all property real and personal, and the appurtenances belonging to said division, as recited in said mortgage and cross-bill; and admit the trusts and covenants contained in said indenture as set forth in said cross-bill; and admit the acceptance of trust by said Dunham, and the acknowledgment and record of said indenture of mortgagea s set forth in said cross-bill.

These respondents admit that the said railroad company did issue a large number of bonds duly signed and sealed, and secured by said mortgage; but these respondents are not advised of the aggregate
658 amount of the bonds so issued, wherefore they neither admit nor deny the amount charged in said cross-bill, but these respondents are advised & admit that some of such bonds were issued in bonds of $1,000 each, dated the said first day of July, A. D. 1856, known as Oskaloosa division bonds, secured on said Oskaloosa division of said company's railroad and its appurtenances; and that by said bonds the said company bound itself, and agreed to pay to bearers thereof the sums therein expressed on the first day of July, A. D. 1876, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July in each and every year until the maturing of said bonds; and these respondents are advised and believe that said bonds to a large amount are now held and owned by divers persons as stated in said cross-bill.

These respondents not being advised can neither admit nor deny that the conditions of the said mortgage have been broken, and that the said railroad company is in default, in that the said company has failed to pay the interest on said bonds when thereto demanded, and these
659 respondents say that they are not advised of the amount of interest unpaid, if any; wherefore they neither admit nor deny the amount stated as due and unpaid in said cross-bill.

These respondents admit that the whole principal and interest of said bonds would become due by reason of such default, if such default has been made, and that the said Dunham would in that case be entitled to a forecloseure of his said mortgage for the entire amount and interest thereby secured, and neither admit nor deny that a majority of the holders of said bonds have instructed said Dunham to foreclose his said mortgage, these respondents having no information sufficient to form a belief thereupon.

And these respondents admit that the said mortgages to the said Dunham are prior to the mortgage sought to be foreclosed by these respondents in their original bill of complaint on file in this cause, but that they are not advised of the amount due upon them nor any of them; and these respondents now pray that their rights and those of their cestui que trust in the premises may be protected by the decree of this court.

660 And these respondents admit that the said Mississippi and Missouri Railroad Company is insolvent and unable to pay its just debts and liabilities.

And these respondents having now fully answered all such parts of

said cross-bill as these respondents are advised it is material or neesessary for them to make answer unto, pray that they may have the relief as already prayed in their said original bill of complaint and the amendment thereto, on file in this cause, and such other relief as the nature of the case shall demand, and to your honors shall seem meet.

THOMAS C. DURANT,
JACOB S. WETMORE,
R. B. MINTURN, JR.,
By J. N. ROGERS,
Their Solicitor.

Endorsed: Filed May 10, 1866.

WOODWARD, *Clerk.*

661 On the same day, to wit, the tenth day of May, A. D. 1866, came the plaintiffs by John N. Rogers, their solicitor, and filed in said clerk's office a replication to the answers of the Mississippi and Missouri Railroad Company, Edward W. Dunham, Thomas E. Walker, and Franklin Haven, which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.—In chancery.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Franklin Haven, Thomas E. Walker, et als.

The replication of the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., to the answers of the Mississippi and Missouri Railroad Company, Edward W. Dunham, and Thomas E. Walker, & Franklin Haven, defendants.

662 These replicants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto and unto each of said answers severally say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants are uncertain, untrue, and insufficient to be replied unto by these replicants; without this, that any other matter or thing whatsoever in the said answers, or any of them, contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters & things these replicants are and will be ready to aver and prove, as this honorable court shall direct, and pray as in and by their said bill they have already prayed.

THOMAS C. DURANT,
JACOB S. WETMORE,
ROBERT B. MINTURN, JR.,
By JOHN N. ROGERS,
Their Solicitor.

Endorsed: Filed May 10, 1866.

WOODWARD, *Clerk.*

663 On the same day, to wit, the tenth day of May, A. D. 1866, came Edward W. Dunham, by John P. Cook, his solicitor, and filed in said clerk's office a replication to the answer of the Mississippi and Missouri Railroad Company, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., to the cross-bill of said Edward W, Dunham; which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.—In chancery.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMPANY, Edward W. Dunham, et al.

The replication of the said Edward W. Dunham to the answers of the Mississippi and Missouri Railroad Company, and Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., defendants, to the cross-bill of the said Edward W. Dunham.

664 This replicant saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers for replication thereunto, and to each of said answers severally, says that he will aver and prove his said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants to said cross-bill are uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in the said answers, or either of them, contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and prays as in and by his said cross-bill he has already prayed.

EDWARD W. DUNHAM.

JNO. P. COOK, *Solicitor.*

Endorsed: Filed May 10, 1866.

WOODWARD, *Clerk.*

665 On the same day, to wit, the tenth day of May, A. D. 1866, came Thomas E. Walker and Franklin Haven, by John P. Cook, their solicitor, and filed in said clerk's office a replication to the answers of the Mississippi and Missouri Railroad Company, and Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., to the cross-bill of the said Thomas E. Walker and Franklin Haven, which replication is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.—In chancery.

THOMAS C. DURANT ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas E. Walker, & Franklin Haven, et al.

The replication of the said Thomas E. Walker and Franklin Haven to

the answers of the said Mississippi and Missouri Railroad Company, and the said Thomas C. Durant, Jacob S. Wetmore, and Robert
666 B. Minturn, jr., defendants, to the cross-bill of the said Thomas E. Walker and Franklin Haven.

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereto, and to each of said answers severally, say that they will aver and prove their said cross-bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers, and each of them, of the said defendants to said cross-bill are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, any other matter or thing whatsoever in the said answers, or either of them, contained, material or effectual in the law to be replied unto, is true.

All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and pray as in and by his said cross-bill they have already prayed.

THOMAS E. WALKER.
FRANKLIN HAVEN.

JNO. P. COOK, *Solicitor.*

Endorsed: Filed May 10th, 1866.

WOODWARD, *Clerk.*

667 On the same day, to wit, the tenth day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

No. 61.

THOMAS C. DURANT, JACOB S. WETMORE, and Robert B. Minturn, jr., complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.	Original bill in equity.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.	Cross-bill.
THOMAS E. WALKER AND FRANKLIN HAVEN, complainants, *vs.* 668 THE MISSISSIPPI & MISSOURI RAILroad Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants.	Cross-bill.

And now, on this tenth day of May, 1866, come the said parties, by their respective solicitors, and the several defendants to complainants' bill having filed their answers thereto; and the several defendants to

the cross-bills filed by said Edward W. Dunham and Thomas E. Walker and Franklin Haven, having filed their answers to the said cross-bills; and the said several complainants in the original bill, and the said cross-bills having filed their respective replications to the said several answers; and it appearing by said cross-bills that the complainants therein set up and claim prior liens on the property described in the mortgage first referred to in the original bill; and that the amount due on each of the said mortgages should be ascertained, it is now here ordered and decreed, on motion of John N. Rogers, esq., solicitor for the said Thomas C. Durant, and his co-plaintiffs, and by consent of all the other parties, that the said matters and things involved in said suit be referred
669 to Thomas F. Withrow, esq., as a special master in this case, now here appointed by this court for that purpose, and the said master shall hear the allegations and proofs of the respective parties, and report his findings to this court.

And it is further ordered that the said master ascertain and report the order of priority of the several mortgages set forth in the bill and cross-bills herein, upon the several divisions of said railroad, and other property covered thereby, and that he ascertain and report whether the conditions of said several mortgages have been broken, and what amount or amounts are now due and unpaid upon the bonds secured by the said several mortgages.

And that he also ascertain & report what locomotive engines, tenders, freight and passenger cars, & other rolling stock, and other personal property of said company are covered by said second mortgages, and what portions thereof belong, or are appurtenant to the said several divisions of said railroad respectively, and whether the lands granted by the United States to the State of Iowa, and by said State to said railroad company are correctly described and set forth in the schedule referred to in the cross-bill of said Walker and Haven, & on file
670 herein, and that he ascertain and report what other real estate, if any, is covered by said mortgages, or either of them, belonging to said railroad company.

On this day, to wit, the eleventh day of May, A. D. 1866, came Thomas F. Withrow, special master in chancery, and filed in said clerk's office a report; which report is in the words and figures following, to wit:

No. 61, equity.—United States of America, district of Iowa, circuit court for said district.—May term, 1866.

In the matter of refrence of the case in equity to the undersigned, Thos. F. Withrow, wherein—

THOMAS C. DURANT ET AL., TRUSTEES, ARE complainants,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD Company, Edward W. Dunham, et als., defendants. } Original bill.

671 EDWARD W. DUNHAM, COMPLAINANT,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, et als., defendants. } Cross-bill.

THOMAS E. WALKER & FRANKLIN HAVEN, complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, et als., def'ts. } Cross-bill.

The undersigned appointed special master in chancery, to examine and report to this honorable court the facts in this case, and the interests of the several parties, complainants and defendants, in accordance with order of refrence by said court, now here makes this his report in the foregoing entitled causes, as follows, to wit:

Report.

On the tenth day of May, 1866, I notified the solicitors of the several parties that I was ready to hear the allegations and proofs of the
672 parties, & thereupon appeared before me the said Thomas C. Durant and his co-plaintiff; by John N. Rogers, esq., their solicitor, and the said railroad company, by C. Baldwin, esq., its solicitor, as defendants, to the original bill and amendment thereto, John P. Cook having appeared for the railroad company to the original bill before the amendment thereto; and Mark Howard and John Webber, by their solicitor, James Grant, esq.; and Edward W. Dunham, Thomas E. Walker, and Franklin Haven, def'ts, in the amended original bill, and complainants in their cross-bill, by John P. Cook, their solicitor.

Thereupon said Thomas C. Durant and his co-plaintiffs introduced a certified copy of their mortgage upon and covering all three divisions of the said railroad, and the said Dunham and Walker and Haven, mortgages, introduced the originals of their said several mortgages, duly executed, acknowledged, and recorded.

Ebenezer Cook, secretary of the said Mississippi and Missouri Railroad Company, was then introduced by said complainants as a witness in the case, who was duly sworn and examined by me, and his
673 testimony reduced to writing by interogatories propounded by me and the answers thereto, which testimony I herewith report by attaching the same to this my report.

From the testimony, exhibits, and in this case I find, as matters of fact—

First. That there is due up to this date, upon the first mortgage, executed to the said Edward W. Dunham, on the first division of said railroad, from Davenport to Iowa City and Muscatine, for principal of the bonds issued—

For past due unpaid	$1,000,000 00
Interest up to this day	336,643 50
	$1,336,643 50

And I also find that said mortgage is a first lien on the said road-bed, rolling stock, materials, fuel, machinery, machine shops, depots, office furniture, gravel pits, stone quarries, and all other property now belonging to said division of said railroad and appurtenant thereto, as shown by the answer of said railroad company.

That of the rolling stock belonging to said company, I find that there are ten locomotives, to wit:

674

The Iowa.	The Des Moines.
" Davenport.	" Samson.
" Nebraska.	" A. C. Flagg.
" Muscatine.	" Le Claire.
" Oskaloosa.	" John A. Dix.

50 box freight cars, numbered from 2 to 100 inclusive.
10 platform cars, numbered from 1 to 10 inclusive.
6 passenger cars, numbered from 1 to 6 inclusive.
5 hand cars, 3 truck cars, and 2 baggage cars, Nos. 1 & 2, belong to the said first division of said railroad as designated in Exhibit "F," of the answer of railroadcompany to cross-bill of said Edward W. Dunham.

Second. That there is due up to this date upon the second mortgage, executed by said company to the said Edward W. Dunham on the said first division of said railroad, and the property, and appurtenences thereunto belonging (being the same property described and covered by the first mortgage as aforesaid) for the principal sum for the bonds issued by said company—

Amounts to	$400,000 00
For past due & unpaid interest up to this day	34,478 00
	$434,478 00

675 Third. I also find that there is due to the bondholders secured by the first mortgage on the second division of said railroad from Iowa City west to Council Bluffs, for principal and interest the following sums, to wit:

For principal	$3,617,000 00
For past dues unpaid interest to date	622,982 71
	$4,239,982 71

And I also find that said last-named mortgage is a first lien on the said road-bed, rolling stock, material, fuel, machinery, machine shops, depots, office furniture, gravel pits, stone quarries, and all other property, real and personal, now belonging to said division of said railroad and appurtenant thereto, and set out in exhibit to answer to railroad company.

And I also find that the lands granted by the Congress of the United States to the State of Iowa, and by the State of Iowa to the said Mississippi and Missouri Railroad Company, to aid in the construction of said railroad, are included in said last-named mortgage, and that said mortgage is a first lien on said lands, and that the list of lands set out in the schedule filed in this court is correct.

676 I also find that of the rolling stock belonging to said railroad company, there are three locomotives, to wit, the "N. B. Judd," "Iowa City," & "C. W. Durant;" 3 passenger cars, Nos. 7, 8, & 9; 40 box freight cars, being all that are numbered above 100; 40 platform cars, being all that are numbered above 19.

2 baggage cars, Nos. 3 & 4.

20 dirt cars, 20 hand cars, 9 truck cars, belonging to the said second division of said railroad, as designated in the schedule or exhibit marked "B" in the answer of the railroad company to the cross-bill of the said Haven and Walker, complainants herein.

Fourth. I also find that there is due to the bondholders of bonds secured by the said mortgage on the Oskaloosa division of said railroad from Muscatine to Oskaloosa, which mortgage was executed & delivered to said Edward W. Dunham as trustee, the following amounts for principal and interest, to wit:

For principal of the bonds issued	$590,000 00
For past due unpaid interest	136,032,00
	$726,032 00

And I also find that said mortgage last aforesaid named is a
677 first lien on the said road-bed, rolling stock, material, fuel, machinery, machine shops, depots, office furniture, gravel pits, stone quarries, and all other property now belonging to said Oskaloosa division of said railroad and appurtenant thereto, particularly set out in exhibit to answer of Mississippi and Missouri Railroad Company to the bill of complainants. I find that none of the rolling stock of said railroad belongs to said Oskaloosa division.

And I further find that the mortgage of 10th day of December, 1861, executed to the said Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., on the three divisions, and whole of said railroad and its property, including the lands granted by the United States to the State of Iowa, and by the said State of Iowa to the Mississippi and Missouri Railroad Company, defendants herein, is junior and subject to all the other mortgages hereinbefore recited.

I also find that there is due to the bondholders, for bonds secured by said mortgage on the whole road, so executed by said railroad company to said Thomas C. Durant and others, for principal and interest, the following sums, to wit:

	For principal of bonds issued.....	$692,000 00
678	For past due and unpaid interest on said bonds....	53,409 02
		$745,409 02

I also find that the judgments of Mark Howard and John Webber were rendered in this court subsequent to the execution and recording of all the aforesaid mentioned mortgages, to wit, at the October term, A. D. 1865.

And I further find that the said Mississippi and Missouri Railroad Company is in default, and that the conditions and covenants in all of said mortgages have been broken; that the said company have failed to pay the interest on said bonds so secured by said mortgages, as alleged in complainants' bill of complaint, and the payment of the said interest was demanded by the several bondholders, at the place of payment designated in said mortgages, and also of the said railroad company, and that, by the said default, the whole principal sum and accrued interest, secured by said mortgages has become due and payable, and that all of said complainants are entittled to a decree of foreclosure, and an order
for the sale of the said railroad, its property and appurtenances,
679 franchises and lands, and everything belonging to said railroad company, included in and covered by said mortgages; and I further find that said railroad company is insolvent. I also find that Curtiss B. Raymond, named as trustee and mortgagee in the said first mortgage on the second division of said railroad, resigned and declined further to execute his trusts, and that the said Franklin Haven was thereupon appointed as the successor of said Raymond in the manner provided by said mortgage.

I herewith file with the clerk of this court the said original mortgage, produced before me in this case, to be filed among the records of this case.

THO. F. WITHROW,
Special Master in Chancery.

Testimony of Ebenezer Cook, a witness produced by said complainants, who, being first duly sworn, in reply to interogatories, saith as follows:

No. 1. What is your name, age, occupation, and residence?

Ans. No. 1. Ebenezer Cook; fifty-six; secretary of the Mississippi & Missouri railroad; & residence, Davenport, Iowa.

680 No. 2. State what amount is due to the bondholders for bonds secured by the complainants' mortgage, and also what amount is due upon the mortgages set out in the cross-bills of Edward W. Dunham and Thomas E. Walker and Franklin Haven.

Answer No. 2. The amount of principal due upon each of said mortgages is as stated in the exhibit attached to the sworn answers of the Mississippi and Missouri Railroad Company, and I have computed the interest thereon up to the eighth day of May, 1866, and said exhibits show in detail the interest due and unpaid thereon, the summary of which is as follows:

2d mortgages construction, Durant, Wetmore, and Minturn, trustees:

Principal	$692,000 00
Interest	52,978 88
Total	$744,978 88

1st mortgage 1st division, E. W. Dunham, trustee:

Principal	1,000,000 00
Interest	335,874 24
Total	$1,335,874 24

2nd mortgages 1st division, E. W. Dunham, trustee:

Principal	$400,000 00
Interest	34,194 25
Total	$434,194 25

681 Oskaloosa division, E. W. Dunham, trustee:

Principal	$590,000 00
Interest	135,613 23
Total	$725,613 23

Land grant mortgages, Thomas E. Walker and Franklin Haven, trustees:

Principal	$3,617,000 00
Interest	620,541 44
	$4,237,541 44

No. 3. What do you know, if anything, about the holders of these bonds, secured by said mortgages, having demanded the interest due thereon?

Answer No. 3. I know the various holders of the different classes of bonds secured by the several mortgages presented cupons, due July 1st, 1865, May 8th, 1865, November 8th, 1865, & January 1st, 1866, for interest on the bonds due on those days, at the bank, where payable at the office of the company, and that payment was refused, and I know that from the books of the company that none of the interest due on any of the above-mentioned days has been paid.

No. 4. State, if you please, what property belongs to each division of said road, including rolling stock, material on hand, fuel, and all
682 other personal property belonging to each division of said roads.

Ans. No. 4. Attached to the several answers of the Mississippi and Missouri Railroad Company to the bill and cross-bill are full and complete statements of the rolling stock belonging to the first and to the land grant division, (there being none belonging to the Oskaloosa division), and also statements showing the lands, lots, and so forth, belonging to each division, which statements were prepared by me from the books of the company, and which are correct, according to my best knowledge and belief. There is also a quantity of material on hand at the shops of the company and at various places on the line of the road, such as iron, ties, timber, tools, car wheels, axletrees, patterns, points, steel, cast-iron, &c., &c., which have been purchased & paid for with the earnings of the road, for repairs of track, bridges, buildings, locomotives, cars, &c., &c., a particular inventory of which I have not now got, & which is constantly changing by the use of some and purchase of other. There is also a large amount of fuel on hand, purchased and paid for with the earnings of the road, procured for operating the
683 railroad of said company, which is upon the line of the road at various points on each division of said railroad, and, as I believe, in about such proportions upon each division as would properly belong to each. There is also office furniture in the various depots and stations on the line, suitable for, and neesessary and proper for operating the road, and also scale and other implements, at various stations, required for use in operating, and belonging to the divisions upon which it is situated.

No. 5. Do you know anything of the declination of Curtis B. Raymond as trustee in the land grant mortgage, and the appointment of Franklin Haven in his stead? If yea, state fully.

Answer No. 5. Mr. Raymond told me he had declined to serve as trustee, and Mr. Walker told me he had nominated Franklin Haven in his stead, and I attach hereto a certified extract from the records of the said railroad company which shows the appointment of said Haven as trustee.

No. six. What lands, if any, are owned or claimed by the said company, and covered by what is known as the land grant mortgage,
684 other than that about which you have already testified?

Ans. No. six. The government of the United States granted to the State of Iowa, and said State granted to said company, certain lands to aid in the construction of their railroad, and the company by said land grant mortgage conveyed said lands to Thomas E. Walker and Curtis B. Raymond, as trustees, to secure the payment of the bonds to be issued under said mortgage. There is filed with the cross-bill of Walker and Haven a book containing a particular description of each tract of land, which descriptions have been carefully prepared with the certified lists from the General Land Office of the United States, and as I believe are correct.

No. 7. State whether or no the Mississippi and Missouri Railroad Company is insolvent.

Ans. No. 7. The property of the company, at a fair valuation, will not pay its liabilities.

EBENEZER COOK.

Subscribed and sworn to by Ebenezer Cook, before me, at Des Moines, this eleventh day of May, A. D. 1866.

THO. F. WITHROW,
Special Master in Chancery.

685 "NEW YORK, *September 16th*, 1859.

"At a meeting of the executive committee of the Mississippi and Missouri Railroad Company, held at their office this day:

"Present, John A. Dix, William Walcott, F. H. Tows.

"Whereas Curtis B. Raymond, of Boston, having declined to serve as a trustee under the provisions of the mortgage executed by this company on the 8th May, 1857, and whereas Thomas E. Walker, the remaining trustee, having, agreeable to the provisions of said instrument, nominated Franklin Haven, of Boston, to fill the vacancy:

"Therefore, resolved, that the nomination of Franklin Haven, of Boston, as such trustee, be approved."

I hereby certify that the foregoing is a true copy from the record of the M. & M. Railroad Company.

{M. & M. R. R. CO. SEAL.} Witness my hand and the seal of the company hereto.

EBENEZER COOK,
Secretary M. & M. R. R. Co.

Endorsed: Filed May 11, 1866.

WOODWARD, *Clerk.*

686 On this day, to wit, the fifteenth day of May, A. D. 1866, came the complainants in said several cross-bills, and filed in said clerk's office a motion to confirm the master's report herein, which report is in the words and figures following, to wit:

THE STATE & DISTRICT OF IOWA, *ss:*

Circuit court of the United States for said district.—May term, 1867.—Des Moines.

THOMAS C. DURANT ET ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et als. } In equity.

Motion to confirm master's report.

And now comes the parties complainants in this cause, by John P. Cook, their solicitor, and moves the court to confirm the report made by Thomas F. Withrow, esq., special master in this case, and that a decree be entered accordingly.

JNO. P. COOK,
Solicitor for Complainants.

Endorsed: Filed May 15, 1867.

WOODWARD, *Clerk.*

687 On this day, to wit, the eleventh day of May, in the May term, A. D. 1866, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

(The decree here entered is set out, commencing at folio 550 of this transcript, with the exception of Schedule A, appended thereto, containing a description of the lands sold, fully, completely, and correctly.)

On this day, to wit, the sixth day of August, A. D. 1866, came Thomas F. Withrow, special master in chancery, and filed in said clerk's office a report of sale, which report is in the words and figures following, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
In & for the District of Iowa, ss:

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., complainants,
vs.
THE MISSISSIPPI & MISSOURI RAILROAD COMpany, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, and John Webber, defendants.
} Original bill in equity for forecloseure of mortgage.

688 EDWARD W. DUNHAM, COMPLAINANT,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, & John Webber, defendants.
} Cross-bill.

THOMAS E. WALKER AND FRANKLIN HAVEN, complainants,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.
} Cross-bill.

Master's report of sale.

To the circuit court of the United States in and for the district of Iowa:

In pursuance and by virtue of a decretal order of this court, made in the above-entitled causes by said circuit court, and bearing date the eleventh day of May, in the year of our Lord eighteen hundred and
689 sixty-six, wherein it was among other things ordered, adjudged, and decreed that in default of the payment of the money found due by the said decree within the time therein specified, all and singular the mortgaged premises mentioned in the original and cross-bills of complaint in this cause and hereinafter described, be sold at public auction by and under the direction of Thomas F. Withrow, a special master in chancery duly appointed for such purpose; that the sale be made at the court-house in the city of Davenport, in the State of Iowa; that said special master give time and notice of the time and place of such sale by advertisement thereof for four successive weeks preceding the day of sale in three newspapers published respectively in the cities of Davenport, Des Moines, and Council Bluffs, in said State; that the said special master execute a deed to the purchasers of the said mortgaged premises; that the said special master make payment to the several mortgagees & plaintiffs, according to their respective rights and interest as established by said decretal order:

I, Thomas F. Withrow, special master in chancery, charged with
690 the execution of said decretal order, do respectfully certify and report—

That default having been made in the payment of the said several sums of money specified in the decree, I advertised said premises to be sold by me at the court-house in the city of Davenport, county of Scott, and State of Iowa, on the 9th day of July, A. D. 1866, at the hour of ten o'clock a. m., that a notice of such sale was publicly advertised for four succes-

sive weeks in three newspapers; one published in the city of Davenport, one in the city of Des Moines, and one in the city of Council Bluffs, all in the State of Iowa; that in the paper in which said notice was published at Des Moines, to wit, "The State Register," a full and complete schedule or list of lands intended to be sold was published and advertised, a copy of which said advertisement is herewith filed, and proofs of the publication of all of said notices are also herewith filed. And I further report that on said ninth day of July, A. D. 1866, the day on which said premises were advertised to be sold as aforesaid, I attended at the time and place fixed for said sale as aforesaid, and exposed
691 said mortgaged premises for sale at public auction, as follows: I first offered for sale to the highest bidder at public auction the first division of said railroad, and its appurtenances, described as follows, to wit: The said railroad, together with all and singular the railway land procured or occupied for right of way, bridges, fences, priviledges, rights, and real estate owned by said company between the city of Davenport and the cities of Iowa City and Muscatine, and all the tolls, issues, incomes, and profits, and all the lands used and occupied for depots or stations, with all the buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars and freight cars, shops, tools, & machinery procured for or connected with the division of sixty-seven miles of road before described and in any way belonging or appertaining to the said sixty-seven miles of road, including all the property of the Mississippi and Missouri Railroad Company on said division, real & personal, and all the rights, credits, and franchises of the company in said division of railroad.

The following is the list or schedule of the lands and lots belonging to or appertaining to the said first division of railroad, which I offered
692 for sale with said division of road as appurtenant thereto: Lot No. three (3) in block No. sixty-four (64), lot No. nine (9) in block No. sixty-seven (67), lot No. two (2) in block No. one hundred & ten (110), lots Nos. four (4) & five (5) in block No. seven (7), and the west half of lot number three in block number seven, all in the city of Muscatine, county of Muscatine, and State of Iowa; also all that part of the east fifty-one and $\frac{92}{100}$ ($51\frac{92}{100}$) acres of the west one hundred and ten and $\frac{92}{100}$ ($110\frac{92}{100}$) acres of the northwest quarter of section ten (10), township seventy-eight (78), range two (2) west, which lies north of the tract of said railroad in Muscatine County, containing thirty-six and $\frac{38}{100}$ ($36\frac{38}{100}$) acres; also the south sixty (60) acres of the west half of the southeast quarter of section six (6), township seventy-eight (78), range two (2) west, containing sixty (60) acres in Muscatine County, State of Iowa. The following is a list or schedule of the engines, cars, and rolling stock appurtenant to said first division, and which I offered for sale with the same, to wit:

Ten locomotive engines, with their tenders, being known and designated by the following names, to wit:

The Iowa, the Davenport, the Nebraska, the Muscatine, the Oskaloosa, the Des Moines, the Samson, the A. C. Flagg, the John A.
693 Dix, and the Antoine Le Claire.

Fifty box freight cars, numbered from two (2) to one hundred (100), even numbers, inclusive.

Ten platform cars, numbered from one (1) to nineteen (19), odd numbers, inclusive.

Six (6) passenger cars, numbered from one (1) to six (6), inclusive.

Five (5) hand cars,

Three (3) truck cars.

Two (2) baggage cars, numbered one (1) and two (2).

And the said first division of said railroad, with its appurtenances were then and there struck off and sold to the Chicago, Rock Island and Pacific Railroad Company at and for the sum of one million dollars ($1,000,000,00), the said railroad company being the highest bidders therefor, and the said sum being the highest sum bid for the said first division and appurtenances.

I then, at the same time and place, offered for sale, at public auction the portion of the said Mississippi and Missouri railroad known as the Oskaloosa division of said road, with its appurtenances, de-
694 scribed as follows, to wit: The railroad of said Mississippi and Missouri Railroad Company, constructed and to be constructed, together with all and singular the railway's land used and occupied for right of way, together with all bridges, fences, priviledges, and rights owned by said company, between the city of Muscatine and the city of Oskaloosa, and all the tolls, incomes, issues, and profits to be had from the same, and all the lands used and occupied for depots or stations, with all buildings standing thereon or procured therefor, together with all the locomotive engines and tenders, passenger cars & freight cars, shops, tools, and machinery procured for or connected with the said division of ninety-five miles of road, being that extending from the city of Muscatine to the city of Oskaloosa, and in any way belonging or appertaining to the said ninety-five miles of road now constructed, and to be constructed, including all the right, property, credits, & franchises of said company in said division of railroad.

The following is a list or schedule of the lands belonging to or appertaining to the said Oskaloosa division of said railroad, which I
695 offered for sale, together with said division of road as appurtenant thereto, to wit, the northeast quarter and the southwest quarter of the southwest quarter of section twenty (20), township seventy-six (76), range two (2) west, situated in Muscatine County, and containing eighty (80) acres.

Also all of the southwest quarter, and the west half of the southeast quarter of section thirty (30), township seventy-six (76), range two (2) west, which lies north of the track of said railroad, situated in Muscatine County, and containing one hundred and ten (110) acres.

And the said Oskaloosa division of said railroad, with its appurtenances, was then and there sold and struck off to the Chicago, Rock Island and Pacific Railroad Company, at and for the sum of three hundred thousand dollars, the said railroad company being the highest bidder therefor, and that being the highest sum bid for said division of road, with its appurtenances, as aforesaid.

I then, at the same time and place, offered for sale at public auction the lands described and referred to in Schedule A in said de-
696 cree, and I offered, first, said lands for sale in seperate parcels, as described in said schedule; and at such sale the west half of the northeast quarter, and the east half of the northwest quarter of section thirty-one (31), in township eighty (80), range twenty-two (22) west, situated in Polk County, were sold and struck off to the Chicago, Rock Island and Pacific Railroad Company, at and for the sum of four hundred and eighty dollars ($480), the said company being the highest bidder therefor, and said sum being the highest sum bid for said land.

I further report that on said lands, for sale in seperate parcels, I received no bid, and no bid was offered for any tract, except the one last above described and sold as aforesaid.

I then offered for sale at public auction, at the same time and place,

all the remaining lands en masse, and also all the right, title, interest, claim, or demand which said railroad company had at the date of said mortgage, or has since acquired in or to all public lands of the United States granted by the act of Congress approved May 15, 1856, and set forth in said mortgage to the State of Iowa, and by the general assembly of said State by the act thereof recited in said mortgage
697 approved July 14th, 1856, granted to the said Mississippi & Missouri Railroad Company, and at such sale the whole of said lands, with the exception of the tract described aforesaid, was fairly struck off and sold to the Chicago, Rock Island and Pacific Railroad Company at and for the sum of one hundred and ninety-nine thousand five hundred and twenty dollars ($199,520), the said company being the highest bidder therefor, and said sum being the highest sum bid for said lands.

I then at the same time and place offered for sale at public auction the western division of the Mississippi and Missouri railroad extending westwardly from Iowa City to Council Bluffs, together with its franchises and appurtenances, and more particularly described as follows, to wit:

All and singular the railway stations, depot lands, and other lands appurtenant to said railroad, owned by the said Mississippi and Missouri Railroad Company at the date of said mortgage to said Thomas E. Walker & another, as trustees, or thereafter acquired, consist-
698 ing or belonging to the railroad of said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, on the Missouri River, together with all the locomotives, cars, buildings, machinery, tools, and implements whatever appurtenant to the above described division of said railroad, and all the franchises, rights, and priviledges appurtenant to said division.

The following is a list or schedule of the locomotives and cars belonging or appurtenant to said division of said railroad which I offered for sale, together therewith as appurtenant thereto:

Three locomotives, with their tenders, to wit: Those known and designated as the "N. B. Judd," "Iowa City," and "O. W. Durant."

Three (3) passenger cars, numbers seven (7), eight (8), and nine (9).

40 (forty) box freight cars, being all that are numbered above (100) one hundred.

40 (forty) platform cars, being all that are numbered above nineteen (19).

Two (2) baggage cars, numbers (3) three & four (4).

20 (twenty) dirt cars.

20 (twenty) hand cars.

9 nine truck cars.

699 The following is a list or schedule of lands and lots belonging or appertaining to said division of said railroad, and which I offered for sale, together therewith as appurtenant thereto, in addition to said land grant:

Lots one (1) and eight (8) in block fifteen (15).

Lots one (1) and eight (8) in block eighteen (18).

Lot three (3) in block eleven (11).

Lot one (1) in block twenty-two (22).

All in Iowa City, Johnson County, also the southeast quarter of the northeast quarter of section twelve (12), township eighty (80), rang twelve (12) west, in Iowa County.

And the said division from Iowa City westward, with its appurtenances as aforesaid, was then and there struck off and sold to the Chicago, Rock Island & Pacific Railroad Company at and for the sum of

six hundred thousand dollars ($600,000), the said company being the highest bidder therefor, and the said sum being the highest sum bid for said division and its appurtenances.

I further certify and report that I have prepared and executed, and have ready for delivery, a deed to the purchaser of the said property as sold by me, as detailed in this report, and now bring said deed
700 into court for approval.

I further report that I am advised and requested to report by the parties in interest that there are some errors and omissions in the descriptions of the lands as published, and for the purpose of correcting said errors and omissions the further action of this court is desired.

I further certify and report that I called upon the superintendant of the Mississippi and Missouri Railroad Company, and requested him to report and pay over to me the net income and earnings of the said road from the eleventh day of May, 1866, to the ninth day of July, 1866.

The said superintendant furnished me with a written report which is hereto annexed, by which it appears that all the income and earnings of said railroad, within the time specified, were used in the operation and neesessary repairs of the road, its track, bridges, machinery, and rolling stock.

And I further report that it will be neesessary to further continue this cause for a final report of the distribution of the purchase-money,
701 and for the correction of such errors as may be found in the description of said lands and real estate so sold by me.

All which is respectfully submitted this sixth day of August, A. D. 1866, now here in open court.

THO. F. WITHROW,
Special Master in Chancery, Circuit Court, United States.

To THOMAS F. WITHROW, Esq., *Special Master in Chancery, &c.*

SIR: In reply to your request that I, as the proper officer of the M. & M. R. R. Company, should report to you the nett earnings of the railroad of that company from the eleventh day of May, 1866, to the ninth day of July, 1866, and to account for and pay over to you such nett earnings, I have to report that during the time named the entire earnings of the road have been used in operating expenses and such necessary repairs of the road-bed, bridges, engines, cars, &c., as in my opinion, as superintendant, were required to render the road & machinery safe for the transportation of persons & property, & therefore there are no nett earnings or income to be paid over to you.

Davenport, July 12, 1866.

I am, respectfully,

A. KIMBALL,
Superintendant.

Endorsed: Filed August 6, 1866.

W. G. WOODWARD, *Clerk.*

702 On this day, to wit, the fifteenth day of May, A. D. 1867, came Thomas F. Withrow, special master in chancery, and filed in said clerk's office a supplemental report, which report is in the words and figures following, to wit:

In the circuit court of the United States in and for the district of Iowa.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jr., complainants,
ag't
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, Mark Howard, & John Webber, defendants.
} Original bill in equity for foreclosure of mortgage.

EDWARD W. DUNHAM, COMPLAINANT,
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, Mark Howard, & John Webber, defendants.
} Cross-bill.

703 THOMAS E. WALKER AND FRANKLIN Haven, complainants,
ag't
THE MISSISSIPPI AND MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., Mark Howard, and John Webber, defendants.
} Cross-bill.

Supplemental report of master.

To the circuit court of the United States in and for the district of Iowa:

I, Thomas F. Withrow, special master in chancery in the above entitled cases, beg leave to report—

That therefore, to wit, at the August term or rule day of said court, for the year 1866, held at Des Moines, in the State of Iowa, I made and submitted my report of the sale of the said Mississippi and Missouri railroad, with all its appurtenances and personal property, together with all the lands granted to the same, which said report was duly approved by the said court then in session, and to which said report for the matters and things therein stated refrence is made.

704 I further report, that in pursuance of the decree made in said case, and of the sale aforesaid, the said Chicago, Rock Island and Pacific Railroad Company, the purchaser of all said property so sold, has paid to me the whole of the consideration money for said sale and purchase, to wit, the sum of two million and one hundred thousand dollars; and that I have paid and distributed said money, as directed and specified in the decree entered in the case, as follows, to wit:

1st. I paid to the respective parties entitled thereto the sum of eighteen thousand and fifty-nine dollars and seventy cents ($18,059 70), being the total amount of the costs of suit, costs of sale, fees of trustees and master, and counsel fees, which said sum was apportioned and charged to the several divisions and trusts pro rata, in proportion to the amounts realized by the sale of each division, a detailed statement whereof is annexed to this report and made part hereof.

2nd. I paid to Edward W. Dunham, the first mortgage on the first division of the said railroad, the sum of nine hundred and ninety-three thousand one hundred and ninety-five dollars and two cents ($993,195 02), that sum being the full amount of the purchase-money

705 for said division and its appurtenances, less the pro rata share of costs and expenses charged and apportioned to said division.

3rd. I paid to Edward W. Dunham, the first mortgagee on the Oskaloosa division of the said railroad, the sum of two hundred and ninety-seven thousand nine hundred and fifty-eight dollars and fifty cents, ($297,958 50), that being the full amount of the purchase-money for said division and its appurtenances, less the pro rata share of costs and expenses charged & apportioned to said division.

4th. I paid to Thomas E. Walker and Franklin Haven, the first mortgages on the second or western division of said railroad, the sum of seven hundred and ninety thousand seven hundred and eighty-six dollars and seventy-eight cents ($790,768 78), that being the full amount of the proceeds of sale of the second or western division of said railroad with the appurtenances, and of the lands, less the pro rata share of the costs and expenses charged and apportioned to said division.

And I herewith file the receipts of the respective parties for the sums so paid out and distributed by me, and attach said reports hereto.

706 I further certify and report that upon the receipt of the purchase-money from the purchaser, I made, executed, & delivered to the Chicago, Rock Island and Pacific Railroad Company a deed of all the property so sold, as in the original report particularly specified, which said deed, both as to form and substance, was heretofore approved by this honorable court, and a record thereof made.

I further report as heretofore in the original report of sale, that I am advised and requested by the parties in interest to report that there are errors & omissions in the description of the lands as published, and for the purpose of correcting said errors and ommissions, the further action of this court is desired, and for such purpose it is prayed that the said cause may remain on the docket.

All of which is respectfully submitted in open court, and the approval of the court requested.

October 23, 1866.

THO. F. WITHROW,
Special Master in Chancery.

707 *Expenses of forecloseure.*

Cook & Drury's bill and fee bill	$7,559 70	
John N. Rodger's "	750 00	
Special master's fees & expenses	650 00	
Revenue stamps on deed	2,100 00	
		$11,059 70
Trustees' charges on first and Oskaloosa divisions:		
E. W. Dunham's charge	$2,000 00	
On second or western division and land grant:		
T. E. Walker's charge $2,500		
F. Haven's 2,500		
	5,000 00	
		$7,000 00
Total		$18,059 70

The road was sold as follows:

First division		$1,000,000 00	
Oskaloosa "		300,000 00	
Western "	600,000		
Land grant	200,000		
		800,000 00	
			$2,100,000 00

708 *Apportionment of expenses.*

First division—E. W. Dunham, trustee:

Share of foreclosure expenses, $\frac{10}{21}$ of $11,059 70	$5,266 52
Share of trustee's fees, $\frac{10}{13}$ of $2,000	1,538 46
	$6,804 98

Oskaloosa division—E. W. Dunham, trustee:

Share of foreclosure expenses, $\frac{3}{21}$ of $11,059 70	$1,579 96
Share of trustee's fees, $\frac{3}{13}$ of $2,000	461 54
	$2,041 50

Western division & land grant—Walker & Haven, trustees:

Share of foreclosure expenses, $\frac{8}{21}$ of $11,059 70	$4,213 22
Trustees' fees, two trustees, $2,500 each	5,000 00
	$9,213 22

First division	$6,804 98	
Oskaloosa "	2,041 50	
Second division & land grant	9,213 22	
		$18,059 70

709 *Amounts due bondholders.*

First mortgage on first division—E. W. Dunham, trustee:

First division sold for	$1,000,000 00
Deduct costs, expenses, & fees, as per statement	6,804 98
	$993,195 02

First mortgage on Oskaloosa division—E. W. Dunham, trustee:

Oskaloosa division sold for	$300,000 00
Deduct costs, expenses, & fees, as per statement	2,041 50
	$297,958 50

First mortgage on second or western division and land grant—Walker and Haven, trustees:

Western division sold for	$600,000 00
Land grant " "	200,000 00
	$800,000 00
Deduct costs, expenses, & fees, as per statement	9,213 22
	$790,786 78

710 Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court in and for the State of Iowa, appointed by said court in the case of Thomas E. Walker and Franklin Haven, trustees, etc., versus the Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said case at the May term, 1866, of the said court, the sum of two thousand five hundred ($2,500) dollars, in full for my services as trustee in the mortgage made to me and Thomas E. Walker on said railroad and its land grant, and foreclosed in said case; and wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,500. FRANKLIN HAVEN.

[U. S. revenue stamp of 2c. affixed & cancelled.]

NEW YORK, *Sept.* 21, 1866.

711 Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court, in and for the State of Iowa, appointed by said court in the case of Thomas E. Walker and Franklin Haven, trustees, etc., versus the Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said case at the May term, 1866, of said court, the sum of two thousand five hundred ($2,500) dollars, in full for my services as trustee in the mortgage made to me on said railroad and its land grant, and foreclosed in said case; and wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,500. THOMAS E. WALKER, *Trustee.*

[Two-cents U. S. revenue affixed & cancelled.]

NEW YORK, *August* 4, 1866.

712 Recieved of Thomas F. Withrow, special master in chancery of the United States circuit court in and for the State of Iowa, appointed by said court, in the case of Edward W. Dunham, trustee, etc., versus the Mississippi and Missouri Railroad Company and others, in the matter of the decree entered in said cause at the May term, 1866, of said court, the sum of two thousand ($2,000) dollars, in full for my services as trustee in the three mortgages made to me on said railroad, and foreclosed in said case, & wherein the property mortgaged was sold on the 9th day of July, A. D. 1866.

$2,000. E. W. DUNHAM, *Trustee.*

[U. S. revenue stamps affixed & cancelled.]

NEW YORK, *Aug.* 4, 1866.

713 Recieved of Thomas F. Withrow, special master in chancery, the sum of two hundred and ninety-seven thousand and nine hundred and fifty-eight and $\frac{50}{100}$ dollars, said sum being paid me as trustee for certain bondholders from the sale of the Oskaloosa division of the Mississippi and Missouri railroad in Iowa, under the first mortgage upon said Oskaloosa division of said railroad, foreclosed by decree in chancery in the circuit court of the United States in and for the State of Iowa, at the May term, 1866, thereof, wherein I, as trustee, was plaintiff and the Mississippi and Missouri Railroad Company and others were defendants, by cross-bill filed in a cause entitleed "Thomas C. Durant and others versus the Mississippi and Missouri Railroad Company and others."

$297,958 50. E. W. DUNHAM, *Trustee.*

[U. S. revenue for receipt affixed & cancelled.]

NEW YORK, *Aug.* 4, 1866.

Recieved of Thomas F. Withrow, special master in chancery, the sum of nine hundred and ninety-three thousand one hundred and ninety-five and $\frac{02}{100}$ dollars, said amount being paid me as trustee for certain bondholders from the sale of the first division of the Mississippi and Missouri railroad in Iowa, on the first mortgage upon said first division of said railroad, foreclosed by decree in chancery in the United States circuit court in and for the State of Iowa, at the May term, 1866, thereof, wherein I, as trustee, was plaintiff, and the said Mississippi and
714 Missouri Railroad Company & others were defendants, by cross-bill filed in a cause entitled "Thomas C. Durant and others versus the Mississippi and Missouri Railroad Company & others."

$993,195 02. E. W. DUNHAM, *Trustee.*

[Reciept U. S. revenue stamp affixed & cancelled.]

DAVENPORT, *July* 10, 1866.

Recieved of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., trustees in mortgage by Mississippi and Missouri R. R. Co., seven hundred and fifty dollars, in full of services as solicitors and counsel in suit to foreclose said mortgage in U. S. circuit court for district of Iowa.

$750. JNO. N. ROGERS.

[Two cents U. S. revenue affixed & cancelled.]

715 Recieved of Thomas F. Withrow, special master in chancery, the sum of seven hundred and ninety thousand seven hundred and eighty-six and $\frac{78}{100}$ dollars, said amount being paid to us as trustees for certain bondholders from the sale of the second or western division (from Iowa City west) of the Mississippi and Missouri railroad in Iowa, and of the land grant of said railroad, under the first mortgage upon said western division and land grant of said railroad, foreclosed by decree in chancery in the circuit court of the United States in and for the State of Iowa, at the May term, 1866, thereof, wherein we, as trustees, were plaintiffs, and the Mississippi and Missouri Railroad Company were defendants, by cross-bill filed in a cause entitled "Thomas C. Durant and others versus the Mississippi and Missouri Railroad Company and others."

$790,786 78. THOMAS E. WALKER,
FRANKLIN HAVEN,
Trustees.

Witness: L. V. F. RANDOLPH.

[Two cents revenue affixed & cancelled.]

716 Recieved of Thomas F. Withrow, special master in the case of Dunham, Durant, and others, vs. the M. & M. R. R. Co'y and others, seven thousand five hundred and fifty-nine and $\frac{70}{100}$ dollars, being amount of our fee and costs as counsel in the said case in the circuit court of the U. S. for Iowa.

October 6th, 1866.

COOK AND DRURY,
By JNO. P. COOK.

[Two cents U. S. rev. affixed & c.]

I certify that I have recieved the sum of six hundred and fifty dollars, my fees and expenses as special master in chancery, and also the sum

of two thousand & one hundred dollars for revenue stamps attached to the master's deed.

Dated at , this 7th day of October, 1866.

THO. F. WITHROW,

Special Master in Chancery, C. C. U. S. Dist. of Iowa, in case of Durant et al. v. M. & M. R. R. Co. et al., &c., &c.

[Two cents U. S. rev. affixed & cancelled.]

Endorsed: Filed May 15, 1867, in open court.

W. G. WOODWARD, *Clerk.*

717 On this day, to wit, the sixteenth day of May, in the May term A. D. 1867, of said court, in the records of proceedings thereof, in said entitled cause is the following entry, to wit:

IN THE CIRCUIT COURT OF THE UNITED STATES,
In and for the District of Iowa, ss:

No. 61.

THOMAS C. DURANT, JACOB S. WETMORE, AND Robert B. Minturn, jun'r, complainants, *vs.* THE MISSISSIPPI AND MISSOURI RAILROAD Company, Edward W. Dunham, Thomas E. Walker, Franklin Haven, et al., defendants.	Original bill in equity for foreclosure of mortgage.
EDWARD W. DUNHAM, COMPLAINANT, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, junior, et al., defendants.	Cross-bill in above case.
718 THOMAS E. WALKER & FRANKLIN HAVEN, complainants, *vs.* THE MISSISSIPPI & MISSOURI RAILROAD Company, Thomas C. Durant, Jacob S. Wetmore, Robert B. Minturn, jr., et al., defendants.	Cross-bill in first above entitled case.

Decree affirming all the master's reports in this case, to wit:

And now on this sixteenth day of May, A. D. 1867, being the third day of the regular term of this court, came the said parties, complainants and respondents in this action, by their respective solicitors, and it appearing by the records of this court in this cause, that heretofore, to wit, on the first Monday of August, A. D. 1866, (that being a regular rule day of this court,) the said parties appeared at a session of this court on that day, and that the special master in this case, Thomas F. Withrow, esq., then and there filed his report showing the sale of
719 said property so mortgaged by the said defendant, the Mississippi and Missouri Railroad Company, under and by virtue of the decree foreclosing said several mortgages, and that the court did then and there confirm said sale and master's report by a decree under date of sixth August, A. D. 1866, duly signed by his honor J. M. Love, judge of said court, and then and there duly recorded among the records of this

case, and now particularly referred to and made a part of this order and decree, and is now here absolutely and finally confirmed, adopted, and made a further order in this case, & of effect then and now, as fully and specifically as the same can be made of record in this court.

And now also comes Thomas F. Withrow, esq, special master in this case, and files his further and final report in the premises in words and figures, to wit:

(There is inserted in this decree a full and complete copy of said master's final report with the exhibits thereto appended. As said report and exhibits are heretofore set out, commencing at folio 1754 of this transcript, the same are here omitted.)

720 Which report, having been submitted to the court, together with a motion to confirm the same by the said Cook and Rogers, solicitors for said complainants, and the court being fully advised in the premises, do now here order, adjudge, and decree, that the said report be now confirmed and entered of record, and that the said special master, Thomas F. Withrow, so far as he has acted and reported in the premises, be discharged.

And it is further ordered, that for the purpose of correcting mis-descriptions of lands, if any, and such other orders neesessary to be made in this cause, the same be continued on the docket from day to day and term to term until otherwise ordered.

J. M. LOVE, *Judge, &c.*

On this day, to wit, the twenty-eighth day of October, A. D. 1868, came B. F. Allen, the reciever in said cause, and filed in the office of said clerk a report; which report is in the words & figures following, to wit:

721 In the circuit court of the United States, district of Iowa:

MARK HOWARD ET AL.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company et al.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

The undersigned, receiver appointed by this court in the above entitled cause, respectfully represents to the court that he has recieved of the fund ordered to be delivered to him by the decree herein, four hundred and fifty thousand dollars of the first mortgage bonds of the Chicago, Rock Island and Pacific Railroad Company, with interest cupons attached, and that he has been notified by W. F. Coolbaugh, esq., treasurer of said company, that the remainder of said fund will be delivered to the reciever upon the treasurer being advised of the exact amount thereof, and the time and place the reciever wishes to recieve the same.

722 I further report that I will, without delay, and upon the adjournment of the present term of this court, take all the steps neesessary to secure the control of the entire fund.

B. F. ALLEN, *Reciever.*

Endorsed: Filed Oct. 28th, 1868.

W. G. WOODWARD, *Clerk.*

There is also on the files of said court in said cause another report,

signed by B. F. Allen, reciever; but of the date of the filing thereof, there is no endorsement or other record in the office of said clerk. Said report is in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } Reciever's report.

To the honorable the judges of the circuit court of the United States for the district of Iowa:

723 The undersigned, reciever appointed by this court in the above entitled cause, respectfully reports: That since making his last report to this court, he has recieved of the fund ordered to be delivered to him by the decree herein ninety-one of the first mortgage bonds of the Chicago, Rock Island and Pacific Railroad Company, and ninety-eight thousand four hundred and sixty-five $\frac{46}{100}$ in money, being the balance of the fund remaining undivided at the making of said report. That the entire fund now under my control, and belonging to said fund, consists of five hundred and forty-one of said bonds, and the sum of ninety-eight thousand four hundred and sixty-five $\frac{46}{100}$ dollars in money; and that said bonds and money have been delivered to me by the Chicago, Rock Island and Pacific Railroad Company.

B. F. ALLEN, *Reciever.*

724 On this day, to wit, the twenty-ninth day of October, in the October term, A. D. 1868, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

MARK HOWARD & ALS.
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD Company & als. } No. 69 eq.

On the application of Frederick A Foster, for leave to file his petition herein, it is ordered that he have such leave, and that the distribution of the fund by the reciever, in pursuance of the decree, be suspended until the determination of the appeal taken from the decree to the Supreme Court, or until the further order of this court; and that the complainants have leave to move, at the next term of this court, in case said appeal shall not have been then argued & submitted, to set aside and rescind this order.

725 On this day, to wit, the thirtieth day of October, in the October term, A. D. 1868, of said court, in the record of proceedings in said entitled cause, is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } 69 equity.

By consent of parties, the reciever herein is directed to make no sale of the bonds of the Chicago, Rock Island and Pacific railroad in his posession until the further order of this court, or of a judge thereof.

J. M. LOVE, *Judge.*

On this day, to wit, the tenth day of April, A. D. 1869, came John V. McCullom, by Scammon McCagg, and Fuller, his solicitors, and files in said clerk's office a motion, with a petition appended, which motion & petition are in the words and figures following, to wit:

726 Circuit court of the United States for the district of Iowa.

MARK HOWARD AND JOHN WEBBER & OTHERS, complainants,
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK Island & Pacific Railroad Company, and others, defendants.
} In equity.

And now comes John V. McCollum, of the city and county of Philadelphia, State of Pennsylvania, who is a citizen of said State of Pennsylvania, and prays leave of this honorable court to file his petition, herewith presented and shown to the court, in the above-entitled cause, and that, upon filing the same, he may be allowed such relief in the premises as he shall appear entitled to, according to the rules and practice of this court, and as shall to justice and equity appertain.

April 8th, 1869.

By his solicitors—

SCAMMON, McCAGG AND FULLER.

Endorsed: Filed May 10th, 1869.

GEORGE B. CORKHILL, *Clerk.*

727 UNITED STATES OF AMERICA, *District of Iowa, ss:*

In the circuit court of the United States for the district of Iowa.—Eighth judicial district.

MARK HOWARD, JOHN WEBBER, JOSEPH Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison,
vs.
THE CITY OF DAVENPORT, THE CHICAGO, ROCK Island & Pacific Railroad Company, George W. Stanton, junior, John Elliott, and Blakely Wilson.
} In equity.

To the judges of the circuit court of the United States for the district of Iowa:

728 John V. McCollum, of the city and county of Philadelphia, in the State of Pennsylvania, who is a citizen of the State of Pennsylvania, respectfully shows unto your honors—

That he is the owner & holder of eighty-four (84) bonds of one thousand ($1,000 00) each, and three bonds (3) of five hundred dollars ($500)

each, representing and amounting in all to the sum of eighty-five thousand five hundred dollars ($85,500 00), issued by the Mississippi and Missouri Railroad Company, a corporation created under and by virtue of the laws of the State of Iowa, together with the cupons attached to said bonds, some of which are long since past due, and others not yet due; and that he is also the owner and holder of cupons to the amount of twenty-eight thousand dollars ($28,000), which were attached to other bonds issued by said railroad company; and which are all past due and wholly unpaid, and the originals of said bonds and cupons this petitioner will present and prove in this court as the court may hereafter require.

Petitioner further shows unto the court that all of said bonds and cupons were secured by the mortgages issued by said Mississippi and Missouri Railroad Company, as stated in the bill and shewn
729 in the proofs and exhibits now on file in this court in the above-entitled cause; to which, for greater and sufficient certainty, this petitioner craves leave to refer, and makes the same a part of this petition.

And this petitioner further shows unto the court that the aforesaid bonds and cupons are wholly unpaid, and that neither he nor any other person or corporation on his behalf has ever made any agreement or arrangement for the collection and payment of said bonds and cupons for a less sum than the amount upon the face thereof stipulated to be paid; and so your petitioner states and shows unto your honors that the said bonds and cupons are still unpaid, and payable according to the original tenor thereof; and being secured as above stated by mortgages upon the property and franchises of said Mississippi and Missouri Railroad Company, the same are to be paid out of the assets and property of said company in the order by which the same were secured by the mortgages given for that purpose, in prefrence to the general creditors of said corporation, whether by judgment or otherwise, whose claims are subsequent in point of time & subject in order of security to the aforesaid bonds and cupons belonging to this petitioner.

730 And your petitioner further shews unto your honors that, by reason of the premises, he is entitleed to have his aforesaid bonds and cupons paid out of the funds now in this court, or under its control, realized from the sale of the property and franchises of the said company, under the authority and by the proceedings set forth and shewn in the bill, answer, evidence, exhibits, and proceedings in the above-entitled cause now on file in this court, & which, as this petitioner is informed and verily believes the fact to be, as appearing upon the records of this court, amounts to about the sum of five hundred and forty-one thousand five hundred & twenty-seven dollars ($541,527), and which payment should be made to your petitioner before anything is paid to the complainants in this cause, Mark Howard, John Webber, Joseph Young, Clark Durant, Thomas W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, & Jared F. Harrison, or any claims represented in this court by the defendants, the Chicago, Rock Island and Pacific Railroad Com-
731 pany, George W. Stanton, jr., John Elliott, and Blakely Wilson, inasmuch as the bonds and cupons belonging to your petitioner, and described in the schedule hereto attached, are prior in order of lien and of security, as this petitioner is advised, informed, & believes, to any and all the claims represented by the parties complainant in this suit.

Wherefore this petitioner files his affidavit herewith, marked Exhibit "B," and prays that the same may be taken as a part of this his petition; & thereupon prays that, upon the final hearing of this cause, this court will order, direct, and decree that the aforesaid bonds and cupons belonging to this petitioner shall be first paid to him, together with all arrearages of interest thereon, out of the funds now in this court or under its control in the hands of B. F. Allen, reciever, before any part of said fund shall be distributed and paid to any of the other parties to this suit, and the proceedings therein now pending in this court, together with his legal costs in this behalf.

And may it please your honors to grant unto your petitioner
732 such other and further relief in the premises as in justice and equity he shall appear entitled to.

By his solicitors—

SCAMMON, McCAGG AND FULLER.

SAM. W. FULLER, *of Counsel.*

Exhibit "B."

UNITED STATES OF AMERICA,
Eastern District of the State of Pennsylvania,
County of Philadelphia, ss:

John V. McCollum, of said county of Philadelphia, in the State of Pennsylvania, being first duly sworn, deposes and says that he is the owner and holder of eighty-four bonds of one thousand dollars each, and three bonds of five hundred dollars each, representing in all the sum of eighty-five thousand five hundred dollars, ($85,500,) of the Mississippi and Missouri Railroad Company, together with the cupons thereon long since past due, as well as those not yet due, and also cupons to
733 the amount of twenty-eight thousand ($28,000) dollars on other bonds of said company, all past due and remaining unpaid, all of which said bonds and cupons are secured by mortgage on the railroad and property of said company.

And this deponent further says that he has never made, entered into, or had any arrangement or understanding with any person, or corporation whatever, for the collection of said bonds or cupons or any part of the same, or consented to any such arrangement, nor, to the best of his knowledge or belief, have said bonds or cupons, or any of them, ever been subject to any such arrangement or agreement; but the same and the amount represented thereby are now a valid lien against said company and its property, secured by mortgage as hereinbefore stated.

And this deponent further says that he has not, nor have any of the prior holders of the bonds, so as aforesaid owned by this deponent, ever made, had, or entered into any arrangement by which he or they would or should recieve any amount in satisfaction of such bonds or cupons, or any of them, less than the full amount due thereon, nor were these bonds
734 or cupons, or any of them, ever subject to any arrangement or agreement, made, as this deponent is informed, some time in the latter part of the year A. D. 1865, between George W. Stanton, jr., John Elliott, and Blakely Wilson, committee, and such stockholders and bondholders of the said Mississippi and Missouri Railroad Company as should assent thereto, respecting the stock and bonds of said company.

And this deponent further states that he is informed and believes that in a certain cause in the circuit court of the United States, held in and for the district of Iowa, wherein Mark Howard and others were complainants, and the City of Davenport, the Mississippi and Missouri

Railroad Company, and others were defendants, a certain decree was, at a term thereof begun and holden on the twelfth day of May, A. D. 1866, entered, among other things providing that the Chicago, Rock Island and Pacific Railroad Company (which, as he is informed and believes, had become the purchaser of the said Mississippi and Missouri Railroad Company's property, land, and franchises, for the sum of five
735 million five hundred thousand dollars ($5,500,000), of which five hundred and fifty-two thousand three hundred and twenty dollars was agreed to be reserved and distributed among the stockholders of the said Mississippi & Missouri Railroad Company, being equal to sixteen per cent. on the par value of the stock of said company) should pay over and deliver to B. F. Allen, as reciever, the sum of five hundred and forty-one thousand five hundred and twenty-seven dollars, (being part of said sixteen per cent. on the par value of stock, as hereinbefore stated,) either in cash, or bonds of said Chicago, Rock Island & Pacific Railroad Company; that he should convert the said bonds so recieved into cash, and from the funds so realized and in his hands pay the costs of said suit in which said decree was rendered, & his own costs, and apportion the balance remaining in his hands among the several complainants in said suit in a manner specifically provided in said decree.

And this deponent further says, that he is informed and believes that said fund is now in the hands of said reciever, in cash and bonds.

And this deponent further states, that he is informed and be-
736 lieves that the complainants in said suit are severally general creditors of said Mississippi and Missouri Railroad Company, who have recovered judgments against said company, which said judgments are liens subsequent to, & subject to the lien of this deponent, under the said mortgage or mortgages securing his said bonds or cupons; that the fund so ordered to be distributed in and by said decree, wholly arises from the sale of property covered by the said mortgage or mortgages so securing said bonds & cupons, and is a corporate fund, and, as he believes, is first subject to the payment of the said indebtedness of said Mississippi and Missouri Railroad Company, so, as aforesaid, held and owned by this deponent, & is, so far as he knows, the only fund now remaining, and the only property out of which the said indebtedness so held and owned by him can be collected.

And this deponent further says that he is informed and believes that an application is soon to be made to have said fund distributed among the complainants in said suit, under the order of said court; that legally & equitably, as he believes, he is entitleed to have the said indebt-
737 edness held by him first paid out of the same, and unless it is so paid he knows of no way in which he can ever collect or recieve the same.

And this deponent further says that he is informed and believes, that the mortgage or mortgages securing his said bonds have been foreclosed in the said circuit court of the United States in and for the district of Iowa, and a sale of all the property and franchises of the said Mississippi and Missouri Railroad Company had in pursuance of the decree of said court, and that the fund now in the hands of said B. F. Allen, reciever, & hereinbefore referred to, is part of the proceeds of said sale, and is the only balance remaining of said sale.

And this deponent further says that he has placed his said bonds and cupons, and all his rights and interests in the matters in this affidavit referred to, in the hands & control of Messrs. Scammon, McCagg and Fuller, attorneys at law, of Chicago, Illinois, with full authority and direction in and to them to take all such steps and institute all such

suits or proceedings as shall seem to them neesessary or expedient
738 to assert or protect his rights or interests in the premises.

J. V. McCOLLUM.

Sworn to & subscribed before me this twenty-seventh day of March, 1869.

W. GRIER HIBLER,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct.

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, do hereby certify that I am well acquainted with the handwriting of W. Grier Hibler, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same, and still is, a commissioner of the United States, duly appointed by the said circuit court, and authorized by law to take affidavits & acknowledgments of bail, and to do all other acts lawfully pertaining to said office.

739 In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, at Philadelphia, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the 93rd.

[L. S.]

JNO. P. RICH,
For Clk Circ. C't U. S.

On this day, to wit, the fifteenth day of April, A. D. 1869, came J. Bardwell, by Polk, Hubbell & Barcroft, his solicitors, and filed in said clerk's office a motion with a petition appended, which motion is in the words and figures following, to wit:

United States of America, district of Iowa.

MARK HOWARD & JOHN WEBBER, Complainants, & Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. 740 Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, & Jared F. Harrison, intervening claimants, & joined as complainants herein, *vs.* THE CITY OF DAVENPORT, THE MISSISSIPPI and Missouri Railroad Company, the Chicago, & Rock Island Railroad Company, the Chicago, Rock Island and Pacific Railroad Company, George W. Stanton, jr., John Elliott, Blakely Wilson, the City of Muscatine, the City of Iowa City, and the County of Scott.	In the circuit court of the U. S. for the district & circuit of Iowa.—No. 69 chancery.

To the honorable judges of the circuit court of the United States, in and for the circuit & district of Iowa:

Joshua Bardwell, your petitioner, respectfully represents that he is a citizen and resident of the State of Massachusetts; that he has an inter-

est in, and is entitled to, a portion of the fund in controversy in
741 the above-entitled cause, and now in the hands of a reciever appointed by this court; that the claim of your petitioner to a portion of said fund is adverse to all the parties to said action, and is not derived from or through the claimants of said fund in said action, and is in no wise affected or determined by the order and decree heretofore rendered in said cause.

That on the eighth day of May, A. D. 1857, the Mississippi & Missouri Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa for the purpose of constructing a railroad therein, executed to Thomas E. Walker and Curtis B. Raymond, as trustees for the uses and purposes therein mentioned, a mortgage by which said company conveyed to said trustees and their successors, all and singular, the roadway, stations, depot lands, and other lands appurtenant to said railway, then owned or thereafter to be acquired by said company, extending from Iowa City, in the State of Iowa, to Council Bluffs, in said State, and the right, title, and interest of said company to all the lands of the United States granted
742 by the act of Congress of May 15th, 1856, to the State of Iowa, and by the act of the legislature of the State of Iowa of July 14, 1856, to said company, together with all the locomotives, cars, buildings, machinery, tools, or implements belonging to said company, and all the rights, franchises, and priviledges appurtenant to said road, then existing or thereafter to be acquired, in trust for the holders of bonds authorized to be issued by said company in any amount not exceeding the sum of seven millions of dollars, in bonds of one thousand dollars each, each of said bonds bearing date May 8th, 1857, and payable on the 8th day of May, A. D. 1877, to Clark Durant, or bearer, with interest at the rate of seven per cent. per annum, payable semi-annually, on the eighth days of November and May in each year until said bonds should become due.

That said railroad company, on said eighth day of May, A. D. 1857, issued and sold a large number of bonds of the denomination of one thousand dollars each, severally payable on the eighth day of May, 1877, to said Clark Durant, or bearer, with interest cupons attached for the payment of semi-annual interest thereon at the rate of seven
743 per cent. per annum, one of which was payable on the eighth day of May and on the eighth day of November of each year until the maturity of said bonds.

And on the eighth day of May, A. D. 1863, the said railroad company issued, sold, & delivered a large number of bonds known & designated as income bonds, being bonds issued for past due interest cupons on said bonds so executed by said company on the eighth day of May, A. D. 1867.

That on the tenth day of December, A. D. 1861, said railroad company executed to Thomas C. Durant, Jacob S. Wetmore, & Robert B. Minturn, jr., as trustees for the uses and purposes therein named, a mortgage conveying all of said property mentioned and described in the mortgage herein above referred, to secure the payment of a large number of other bonds then issued, sold, and delivered by said company, and described in said mortgage; each of which bonds was for the sum of one thousand dollars, payable to said Clark Durant, or bearer, on the first day of January, A. D. 1882, with interest at the rate of seven
744 per cent. per annum, payable semi-annually, for which interest cupons were attached, payable on the first day of June and January of each year until the maturity of said bonds.

That said company also, at different other times, executed to different other parties, different other bonds, also secured by other mortgages on said property described in said mortgages, executed by said company.

And for more greater certainty and more definite statement as to the several mortgages executed by said railroad company, and the several bonds and debts of said company mentioned and described therein, and secured thereby, and for more definite description of the property so mortgaged, petitioner prays leave to refer to the record in the case of Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., complainants against said railroad company, to which the trustees named in the said several mortgages were parties lately pending in this court, and makes the record in said cause a part of this petition.

Petitioner further says that such proceedings were had in said last-
mentioned action in this court, that a decree was rendered in
745 favor of the several trustees in said several mortgages, against said railroad company, for several sums, amounting in the aggregate to the sum of seven millions four hundred and eighty-two thousand thirty-five dollars and thirty-four cents, and a decree of foreclosure & sale of said property to pay off and satisfy said several sums; that all of said property was sold pursuant to said order & decree of said court, and the Chicago & Rock Island Railroad Company became the purchaser thereof at and for the sum of five million five hundred thousand dollars, and that the holders of the several bonds secured by the said several mortgages foreclosed in said action are entitled to the application of the proceeds of said sale according to the priorities of the several mortgages by which their respective bonds were secured.

And your petitioner further represents that the funds in controversy in this action, being the sum of five hundred and fifty-two thousand four hundred dollars, in the hands of B. F. Allen, a receiver appointed by this court, is a part of the proceeds of said sale.

And that said funds were put into the hands of the said
746 George W. Stanton, jr., John Elliott, and Blakely Wilson, defendants in this action, with intent and for the purpose of diverting them from the payment of the said several bonds secured by said several mortgage, according to their several priorities as ascertained and determined by this court in said action to foreclose said mortgages, under and in pursuance of an alleged agreement between a portion of the bondholders and a portion of the stockholders of said company, by the terms & stipulations of which proper proceedings were thereafter to be had for the foreclosure of the several mortgages executed by said company to secure said bonds, and that sixteen per cent. of the proceeds of said sale should be given to the stockholders of said company.

That after the sale of said property under the proceedings to foreclose said mortgages, the one-sixteenth of the proceeds thereof, being the amount and the fund in controversy in this action, was put into the hands of George W. Stanton, jr., John Elliott, and Blakely Wilson, and by them transferred to the said receiver herein.

Petitioner further shows that at the time of making said alleged agree-
ment by a portion of the bond & stockholders of said company,
747 he was, and ever since has been, and still is the owner of five of the bonds of said company, secured by the mortgage executed by said company on the eighth day of May, A. D. 1857, one bond of the class designated as income bonds, and one bond issued by said com-

pany secured by said mortgage of said company, executed on the tenth day of December, A. D. 1861, as hereinbefore stated, with the several cupons thereto attached, and that there is now due to him thereon the sum of about nine thousand dollars, and that he is entittled to the payment thereof out of the money in the hands of the receiver in this cause according to the priorities of the several mortgages by which they were secured as aforesaid.

Petitioner further shows that he was not present at the making of said alleged agreement between said bondholders and stockholders of said company, never assented to said agreement, or in any manner consented to the diversion of said sixteen per cent. of the proceeds of the sale of said property, or of any other sum, from the payment of said bonds.

Petitioner further shows that a large number of the holders of said bonds, and the owners of a large amount thereof, were not parties
748 to said alleged agreement, and have never in any manner consented to the diversion of any portion of the proceeds of said sale from the payment of said bonds, and that the lien of petitioner and the holders of said bonds who have not assented to said alleged agreement is prior and paramount to any right, lien, or interest of the said Mark Howard, John Webber, & other parties joining with them as complainants in this action to said fund.

Wherefore petitioner prays that an account may be had and taken of the bonds held by persons who did not enter into said alleged agreement, and have in no manner assented to or ratified the same; and in order thereto that a special master be appointed by this court to inquire and report how many & what bonds were represented by the holders thereof, at the meeting of the bondholders & stockholders of said company, at which said agreement is alleged to have been made; and that on the final hearing hereof, the court may find & determine the amounts and priorities of the several bonds secured by said several mortgages, & order, adjudge, and decree that said fund now in the hands of the receiver in this case be applied to the payment and discharge of
749 said bonds according to the ascertained priorities thereof, before any portion thereof is applied to the payment of the claims of complainants, according to the decree of the court heretofore rendered in this cause, and for such other and further relief as may be just and equitable.

POLK, HUBBELL & BARCROFT,
Atty's for Petitioner.

Endorsed: Filed April 15th, 1869.

GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the eleventh day of May, A. D. 1869, came the plaintiffs, by Grant, their solicitor, and filed in said cause, in said clerk's office, the mandate of the Supreme Court of the United States, which mandate is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges
750 of the circuit of the United States for the district of Iowa, greeting:

Whereas lately, in the circuit court of the United States for the district of Iowa, before you, or some of you, in a cause between Mark

Howard & John Webber, complainants, and Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Marg'et J. Nesbit, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants joining in the bill, and the City of Davenport, the Mississippi and Missouri Railroad Company, the Chicago & Rock Island Railroad Company, the Chicago, Rock Island, and Pacific Railroad Company, George W. Stanton, jr., John Elliott, and Blakely Wilson, the City of Muscatine, the City of Iowa City, and the County of Scott, defendants, wherein the decree of the said circuit court entered in said cause is in the following words, to wit:

(Here follows a full & correct copy of the final decree in this cause, a full, true, and correct copy of which appears herein, commencing at folio 777 of this transcript.)

751 As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appear.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty-eight, the said cause came on to be heard before said Supreme Court on said transcript, and was argued by counsel, on consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be, and the same is, hereby affirmed with costs, and that the said complainants recover against the said defendants the City of Davenport et al., for their costs herein expended & have execution therefor. 8 February, 1869.

You therefore are hereby commanded that such execution and proceedings be had in said cause, as, according to right and justice, & the laws of the United States ought to be had, the said appeal notwithstanding.

752 Witness the Honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Costs of complainants: clerk, $; attorney, $, paid by defendants. Taxed by

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Endorsed: Filed May 11th, 1869.

GEORGE B. CORKHILL, *Clk.*

On this day, to wit, the thirteenth day of May, A. D. 1869, came Frederick A. Foster, by Withrow and Wright, his solicitors in said entitled cause, and filed in said clerk's office an affidavit of Ebenezer Cook, which affidavit is in the words & figures following, to wit:

In the circuit court of the United States, district of Iowa.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL. } Affidavit of E. Cook.

753 I, E. Cook, of the city of Davenport, in the State of Iowa, being first duly sworn, depose and say that I have read a paper purporting to be a copy of an affidavit of James Grant, in the above-entitled cause, subscribed & sworn to before one S. F. Smith on the eight-

eenth day of March, A. D. 1869, in which the said Grant is represented as making the following statement:

"I further declare on oath that Ebenezer Cook, secretary of the Miss. & Mo. company, informed me about the time his deposition was taken that all the bonds of all classes have been surrendered to the trustees, except thirty-six bonds of one thousand dollars each."

That said statement, as appears by said paper, is alleged to have been made in refrence to the bonds issued by the said M. & M. railroad. I expressly and positively declare that I never used the language above quoted, either literally or substantially, to the said James Grant at the time named or at any other time; that I remember a conversation with the said Grant about the 9th day of May, 1867, in which I told him substantially that I did not know the amount of bonds paid, but that as nearly as I could recollect all the trust company's certificates issued
754 for bonds, except about $36,000, had been taken up; that said trust company's certificates were issued to assenting bondholders for bonds surrendered to the trust company, pursuant to the contract under which the mortgages were foreclosed; that such certificates were not issued to non-assenting bondholders.

That I never told said Grant that all of the non-assenting bonds except thirty-six had been paid, and that I am informed and verily believe that the number of such bonds outstanding very greatly exceeds the number named; that at the time at which the said Grant represents that I made said statement, I had knowledge of over one hundred thousand dollars of outstanding non-assenting bonds; and I had been informed and believed that a much larger amount was outstanding.

I further say that I have read in said paper the following statement: "I was also on the eighth day of March, 1869, informed by Messrs. Elliott and Wilson that the Chicago, Rock Island & Pacific R. R. Co. retained by their consent four months' interest on the bondholders' share of the five and a half millions, making about one hundred and fourteen thousand dollars, to meet any contingencies which might
755 arise from any claim or contest of the non-assenting bondholders, and this sum is amply sufficient to pay every dollar of outstanding bonds of the M. and M. co. which did not assent to the terms of sales, and accept the pro rata shares under the trustees' contract;" that I have no knowledge as to whether said statement was made by the said Elliott and Wilson to the said Grant, but I do know that said statement is untrue in every particular; that no interest was ever retained from the assenting bondholders for any such purpose; and that, as I am informed and believe, the sum named would be entirely inadequate to pay the amounts due to the holders of the outstanding and non-assenting bondholders of the Mississippi and Missouri Railroad Company.

EBENEZER COOK.

Sworn & subscribed before me this 19th day of April, A. D. 1869.
[L. S.] D. B. SHELLEY, *Notary Public.*

Endorsed: Filed May 13, 1869.
GEORGE B. CORKHILL, *Clerk.*

756 On this day, to wit, the fifteenth day of May, A. D. 1869, came H. S. McComb, by Nourse and Kauffman, his solicitors, and filed in said cause a motion, to which a petition was appended, which motion and petition are in the words and figures following, to wit:

In the circuit court of the United States for the district of Iowa.

MARK HOWARD ET AL., PL'FFS,
vs.
THE CITY OF DAVENPORT ET AL., DEF'TS. } 69 Chancery.

And now comes H. S. McComb, a citizen and resident of the State of Deleware, at the city of Wilmington, in said State, and by his attorney moves the court for leave to file his petition herein, claiming and interest and lien upon the funds in the hands of B. F. Allen, a receiver, appointed in said cause, and under the control of this court, and asks that, on the filing & hearing of said petition, the court may find and determine the extent of the interest of said petitioner in said fund, and
757 that it may order, adjudge, & decree that the lien of petitioner is prior and paramount to any and all claims of the parties joining as complainants in this cause, and that such fund, or so much thereof as may be neesessary for that purpose, be applied to the payment and satisfaction of the amount found due petitioner, and such other relief as petitioner may be entittled to receive.

C. C. NOURSE,
Att'y for Petitioner.

In the circuit court of the United States for the district of Iowa.

MARK HOWARD
vs.
THE MISSISSIPPI AND MISSOURI RAILROAD COMPANY.

To the circuit court of the United States for the district of Iowa:

Your petitioner, H. S. McComb, a citizen of the city of Wilming-
758 ton, and State of Deleware, of the United States of America, shows to the court—

That heretofore, to wit, before the execution of the deed of trust and mortgages hereinafter set out, the Mississippi and Missouri Railroad Company was organized a body corporate under the laws of the State of Iowa, for the purpose of constructing and operating a railroad within said State.

That in pursuance of said purpose and according to the authority of the articles of incorporation, said company afterwards, to wit, on the day of , 185 , executed their certain trust deed, conveying to the trustees therein named, to wit, Thomas C. Durant and Jacob S. Wetmore, in trust for the uses & purposes therein named, all the right, title, and interest of said company then or thereafter acquired, in and to the railroad of said company, the equipments and appurtenances thereof, from the city of Davenport to Council Bluffs, Iowa; and also all the right, tittle, and interest which the said company now have or shall hereafter acquire in and to all public lands of the United States, granted by act of Congress, approved May 15th, 1856, to the State of Iowa, and by the general assembly of the State of Iowa by act approved
759 July 14, 1856, granted to said Mississippi and Missouri Railroad Company; that said conveyance and deed as aforesaid was in trust to secure bonds then about to be and thereafter issued, known as second mortgage construction bonds, in an amount not to exceed seven hundred thousand dollars, subject, nevertheless, to any prior mortgages or liens theretofore created on said road.

That under and by virtue of said trust deed the said Mississippi and Mis-

souri Railroad Company issued and sold their bonds in the market, to an amount unknown to your petitioner, in sums of five hundred & one thousand dollars each, with interest at seven per cent. per annum, payable semi-annually, and with cupons attached for the payment of said interest, which said bonds were payable on the first of January, 1882.

That of the bonds so issued your petitioner is now the owner and holder of a bond for the sum of five hundred dollars, issued on the tenth day of December, 1861, payable to C. W. Durant or holder or bearer thereof, with interest as aforesaid, payable on the first of July &
760 January of each year, which said bond is No. 750 of the series so secured by the deed of trust aforesaid, and that the said bond with cupons attached, except as to the first two years' interest after the date of the bond, remains the property of petitioner and is wholly unpaid.

Your petitioner further states that he is now the owner and holder of receipts of the treasurer & register of the said Mississippi and Missouri Railroad Company No. 210, dated February 1st, 1864, for interest cupons of the first mortgage construction bonds of said railroad company, to the amount of two hundred & fifty-two & $\frac{50}{100}$ dollars issued as scrip by said company, convertible into the second mortgage construction bonds of said company according to the terms of agreement bearing date October 1st, 1862, whenever presented in sums of five hundred or one thousand dollars, being the denomination of said second mortgage construction bonds.

That said cupons were surrendered under said agreement, and that petitioner is and was entitled to claim an interest in the mortgage given to secure said bonds to the amount of said receipt or scrip.

761 Your petitioner further shows that heretofore, to wit, on the fifth day of , 1866, Thomas C. Durant, Jacob S. Wetmore, and Robert B. Minturn, jr., filed their bill in this court against the said Mississippi and Missouri Railroad Company et al., to foreclose certain mortgage liens upon the railroad, land grant, franchise, road bed, and other property, in which all the parties having or claiming liens on said road and other property of said company were parties either plaintiff or defendant, and that the trustees aforesaid in the deed of trust first hereinbefore set out, to secure among others the bonds held by your petitioner and the cupons surrendered as aforesaid and the scrip aforesaid, were made parties.

That on the eighth day of May, 1866, it was in said cause decreed, in and by the court, among other things, that there was due on the several mortgages and deeds of trust described in said decree and foreclosed in said proceeding for principal and interest, the sum of 7,182,-545$\frac{37}{100}$ dollars to be paid to the trustees in said several mortgages and deeds of trust set up in the several bills of complaint and cross-
762 bills of the several defendants in the said suit, and that in default of such payment within a term fixed in said decree, the property of said Mississippi and Missouri Railroad Company hereinbefore described was decreed to be sold for the satisfaction and payment thereof, all of which will more fully appear by the record of said cause now in this court, to which refrence is made herein for greater certainty and made a part of this petition.

That no part of the proceeds of said sale has been paid to the plaintiffs in this action, nor has anything been paid upon the bonds of complainant hereinbefore described, or the scrip for the cupons surrendered as aforesaid, nor has the interest or any part thereof been paid, either by said company or said trustees.

Petitioner further shows that on or about the 20th day of October, A. D. 1865, and prior to said foreclosure and sale, an arrangement and agreement was made by and between the Chicago and Rock Island Railroad Company, a body corporate under the laws of the State of
763 Illinois, and other parties, including a portion of the holders of the said mortgage bonds, of the class named in the deed made to secure the debt due your petitioner, by which it was agreed by the parties to said agreement, to sell the property of the said company, included in the trust deed, made to secure your petitioner's debt for the sum of five and one-half millions of dollars, and to divide the proceeds of the said sale, in part, to stockholders of said M. & M. R. R. Company, and a part to the payment of a percentage only of the bonds secured by the mortgages & trust deeds aforesaid, and that it was further agreed to convey the title to the purchaser by means of a foreclosure of said mortgages and trust deed, and to pass the title under a decree and sale by this court.

Petitioner expressly avers that he never assented to said agreement, & never at any time have consented to accept of a percentage in payment of the bond and cupons aforesaid, and was never a party in any manner thereto. Petitioner show, that in pursuance of said agreement said property so described in the trust deed made to secure the petitioner's debts, was bid off by the Chicago, Rock Island and
764 Pacific Railroad Company, at the sale by the master at the nominal sum of two millions one hundred thousand dollars, but that, in truth and in fact, the purchaser of said sale had agreed with the trustees and other parties in interest to pay, and the true consideration of the deed and sale was the sum of five and one-half millions of dollars.

That under said arrangement & agreement, it was agreed that the stockholders of the Mississippi and Missouri R. R. Company should have of the proceeds of the sale of said property the sum of sixteen per cent. of the par amount of stock held by them, and that, under said agreement, the sum of about $560,000 of the proceeds of said sale has been reserved and set apart for the benefit of said stockholders of said Mississippi and Missouri Railroad Company.

Petitioner further shows that the plaintiffs in this cause are general creditors only of the said Mississippi and Missouri Railroad Company, and have no lien upon said fund or any part thereof, & and that the same is the proceeds of the sale of the property pledged to secure the debt due your petitioner.

765 That, as petitioner is advised, the sum of $560,000, and accrued interest thereon, is now in the hands of a receiver of this court, and is under its control for the purposes of distribution.

Your petitioner shows further, that according to said arrangement and agreement to which petitioner was made a party, he is advised and believes that the trustees named in said trust deed have not come into posession of any of the proceeds of the said sale, and that by the terms of said agreement your petitioner cannot receive any per cent. of the amount due him, not having assented thereto; that the said Mississippi and Missouri Railroad Company is insolvent, and that the property aforesaid so sold and disposed of as aforesaid, constituted all of its property, & petitioner has no other means of obtaining payment of his debt except by the equitable order of this court ordering a pro rata distribution of the same to your petitioner, according to his rights and priority as hereinbefore set out and claimed.

Your petitioner therefore prays the court that such proceedings

766 may be had, that petitioner may be permitted to prove his claim against the Mississippi and Missouri Railroad Company, and may be decreed payment of his debt out of the funds now in the hands of the receiver as aforesaid, and now under the control of this court, or of such equitable and pro rata share thereof as in equity and good conscience petitioner is entitled to receive, and for such other, further, and full relief as petitioner is entitled in equity and good conscience to have.

C. C. NOURSE,
Att'y for Petitioner.

UNITED STATES OF AMERICA, *District of Iowa, ss:*

I, Charles C. Nourse, being duly sworn according to law, do depose and say that I am the attorney of petitioner in the above petition and that I now have in my posession the bond and scrip set forth in said
767 petition and hold the same for collection, with full authority to take such steps in the premises as will secure the rights of the petitioner; that said petitioner H. S. McComb is not in the State of Iowa, and cannot in person make affidavit to his petition, and that a delay to obtain an oath to the same may seriously prejudice the right of said petitioner in the premises.

That I have investigated the truth of the matters set forth in said petition and have as full information thereof as the said petitioner, and that I believe the facts set forth and the several allegations of said petition are true.

C. C. NOURSE.

Sworn to & subscribed before me, by C. C. Nourse, this fifteenth day of May, 1869.

GEORGE B. CORKHILL, *Clerk.*

Endorsed: Filed May 15, 1869.

GEORGE B. CORKHILL, *Clerk.*

768 On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers and Edmonds, their solicitors, and the defendants Elliott and Wilson, by Grant, their solicitor, and filed with said clerk a motion in said entitled cause; which motions are in the words and figures following, to wit:

Circuit court of the United States, dist. Io'a.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } In equity.

Now come the plaintiffs, and show to the court by affidavits, that the defendants the Chicago, Rock Island, & Pacific Railroad Company have posession of a book called, "A book with agreement and list of assenting bondholders to the sale of Mississippi and Missouri Railroad Company;" that said book is neesessary to be examined by the plaintiffs before they can properly answer the petitions of Frederick Foster and others;
769 that the posession of said book has been demanded by the owners thereof, the railroad & trust co.; that the plaintiffs and said owners might examine said book to ascertain the true amount & number of non-assenting bondholders; the said railroad company refused to surrender

said book on demand. The plaintiffs now move that the Chicago, Rock Island, & Pacific co. be ordered forthwith to produce said book before this court, that the said plaintiffs may examine and inspect the same to enable them to answer the bills of Foster and others.

GRANT, ROGERS & EDMUNDS, *for Pl'ffs.*

The trustees of the bondholders Elliott and Wilson, unite in this motion, as they wish to answer for themselves.

GRANT, *for Elliott & Wilson.*

Endorsed: Filed May 15th, 1869.

GEORGE B. CORKHILL, *Clerk.*

770 On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers and Edmunds, their solicitors, and the defendants Elliott and Wilson, by Grant, their solicitor, and filed in said clerk's office the affidavit of J. H. Frothingham; which affidavit is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

I, J. H. Frothingham, president of the Union Trust Company, in the city of New York, being duly sworn, depose on oath that some time in the year 1866, after the consumation of the sale to the Chicago, Rock Island & Pacific Railroad Company, of the property and franchises of the Mississippi and Missouri railroad, the said Chicago, Rock Island & Pacific Railroad Company, through its officers, borrowed from the officers of said Union Trust Company, where the same had been depos-
771 ited by Messrs. Elliott, Wilson, & Stanton, trustees for the stock & bondholders of the Miss. & Mo., a book containing a copy of the contracts of the assenting bondholders to the sale of said road, for the purpose of paying to said assenting their respective shares of bonds to which they were entittled by said contract of sale and assent. That said book has never been returned, though a demand was made for the same on the twenty-sixth day of April, 1869. The within-named books were loaned by direction of said trustees.

J. H. FROTHINGHAM, *Pres't.*

STATE, CITY, AND COUNTY OF NEW YORK:

On this the first day of May, 1869, came before me, a notary public in and for said city and county, J. H. Frothingham, to me personally known to be the person who executed the affidavit above, and being by me duly sworn, did declare on oath that the facts therein stated were true, & subscribed the same in my presence.

[SEAL.]

S. H. SLOSSON,
Notary Public, City & County of New York.

Endorsed: Filed May 15, 1869.

GEORGE B. CORKHILL, *Clerk.*

772 On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers & Edmunds, their solicitors, and the defendants Elliott & Wilson, by Grant, their solicitor, and filed

in said clerk's office the affidavits of John Elliott & Blakely Wilson; which affidavits are in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT AND OTHERS.

Affidavit of John Elliott and Blakely Wilson, two of the committee appointed at a meeting of the bond and stockholders of the Mississippi and Missouri Railroad Company, held in the city of New York, October 20th, 1865, being duly sworn, depose on oath that some time in the year 1866, after the consumation of the sale to the Chicago, Rock Island and Pacific Railroad Company, of the property and franchises of the Mississippi & Missouri Railroad Company, the said Chicago, Rock Island and Pacific Railroad Company, through its officers, obtained
773 the consent of said committee to borrow from the office of the Union Trust Company, in the city of New York, where the same had been deposited by the said committee, a book containing a copy of the contracts of the assenting bondholders to the sale of the said Mississippi and Missouri railroad for the purpose of paying to said assenting bondholders their respective shares of the bonds to which they were entitled by said contract of sale and assent that the said book was so borrowed by the said Chicago, Rock Island and Pacific Railroad Company, and has never been returned, although a demand was made for the same on these defendants, on the 29th day of April, 1869, and repeated this day, when John F. Tracy, president, and Francis H. Tows, assistant secretary, of said Chicago, Rock Island and Pacific Railroad Company were present, the latter saying, in reply to the demand, that they would not give them up.

These defendants further say that George W. Stanton, the other member of the committee, is prevented by serious illness from attending to business, and is consequently unable to write in this affidavit.

JOHN ELLIOTT.
BLAKELEY WILSON.

774 STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this third day of May, 1869, came before me, a commissioner for the State of Iowa, in and for said city and county, John Elliott and Blakeley Wilson, to me personally known to be the persons who executed the affidavit above, and being by me duly sworn, did declare on oath that the facts therein stated are true, and subscribed the same in my presence.

EDWIN F. COREY,
[SEAL.] *Commissioner for the State of Iowa in New York.*

Endorsed:

Filed May 15th, 1869.

GEORGE B. CORKHILL, *Clerk.*

On the same day, to wit, the fifteenth day of May, A. D. 1869, came the plaintiffs, by Grant, Rogers and Edmunds, their solicitors, and the defendants Elliott and Stanton, by Grant, their solicitor, and filed in said clerk's office a certain notice with the affidavit of S. F. Smith appended thereto; which notice and affidavit are in the words & figures following, to wit:

Circuit court of the United States for the district of Iowa.

775 MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS.

To the Chicago, Rock Island, and Pacific Railroad Company, its agents and servants:

You are hereby notified to produce before the circuit court of the United States for the district of Iowa, at the term thereof to be held on the second Monday in May, 1869, at Des Moines, a book loaned to you by the Union Trust Company, containing agreements of bondholders, and list of surrendered bonds of the Mississippi and Missouri Railroad Company, and which book at the date of this notice you have refused to return to said trust company.

GRANT AND SMITH,
Attorneys for Pl'ff in said suit.

STATE OF IOWA, *Scott County, ss:*

I, S. F. Smith, being duly sworn, do state on oath that I served
776 the within notice in the city of Davenport, Scott County, Iowa, on the 27th day of April, A. D. 1869, on the Chicago, Rock Island, and Pacific Railroad Company, by reading the same to Ebenezer Cook, secretary of the Ch., R. I., & Pacific R. R. Co., in his presence & hearing, & by delivering to the said Cook a true copy of the same.

S. F. SMITH.

Subscribed & sworn to by S. F. Smith, before me & in my presence, this 27th day of April, A. D. 1869.

J. W. BIRCHARD, [SEAL.]
Notary Public, Scott Co., Iowa.

Endorsed:

Filed May 15, 1869.

GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the twentieth day of May, A. D. 1867, came the defendants Elliott and Wilson, by Grant, their solicitor, and filed in the said clerk's office a motion; which motion is in the words and figures following, to wit:

777 Circuit court U. S.

MARK HOWARD & AL.
vs
THE CITY OF DAVENPORT & AL.

Now come the trustees named in said decree, and file their assent to the payment of the bonds & cupons not due according to the decree, and they also file a request of a majority of the stockholders to continue them in their , and move the court to add to the former order of this court, that the receiver deliver to said trustees or a majority of them on their order, the judgments, cupons, and bonds which may

be paid out of the sixteen per cent. dividend of the stockholders referred to in the decree.

GRANT,
For Elliott & Wilson, Trustees.

Endorsed: Filed May 20, 1869.
GEORGE B. CORKHILL, *Clerk.*

778 On this day, to wit, the twenty-first day of May, A. D. 1869, came the defendants Elliott and Wilson, by Grant, their solicitor, and filed in said clerk's office a paper which is in the words and figures following to wit:

Circuit court of the United States for the district of Iowa.

MARK HOWARD & OTHERS
vs.
THE CITY OF DAVENPORT & OTHERS. } In equity.

To the judges of said court and the receiver in said cause:

Being desirous of closing up the matter in controversy in the cause & collecting as near as possible the judgments, cupons, and bonds to which we may be entitled under the decree, the court may, in vacation, make all the proper orders to perform the decree which do not involve us in personal liability; we desire the judgments, cupons, & bonds to which we may be entitled in the execution of the decree to be delivered to Mr. James Grant.

JOHN ELLIOTT.
B. WILSON.

Endorsed: Filed May 21st, 1869.
GEORGE B. CORKHILL, *Clerk.*

779 On this day, to wit, the twenty-sixth day of May, in the May term, A. D. 1869, of said court, in the records of proceedings thereof in said entitled cause, are the following entries to wit:

MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL.

Now on this the first day of the term of the court, comes Mark Howard & others, plaintiffs, by Grant, Rogers & Edmunds, their attorneys, and file in this cause the mandate of the Supreme Court of the United States, affirming the decree herein, and move the court to execute said mandate by distributing the fund in the hands of the receiver, in pursuance of said decree, which motion is overruled.

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now on this day, the 20th day of May, this cause coming on to be heard, on the motion of plaintiffs herein, to modify the decree heretofore rendered in accordance with certain papers on file with said
780 motion in said cause, and the court having heard the same and being fully advised, overrules said motion.

MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL.

And now on this day, the fifteenth day of May, this coming on to be heard on the motion of plaintiffs herein, to compel the defendants the Chicago, Rock Island, and Pacific Railroad Company, to produce a certain book for the examination of plaintiffs, and the court having heard the argument of counsel, and being fully advised in the premises, overrules said motion.

MARK HOWARD
vs.
THE CITY OF DAVENPORT ET AL. } No. 69 eq.

This cause, comeing on to be heard on motion of complainants, to distribute a portion of the funds in the hands of the reciever heretofore appointed in this cause, the motion of John V. McCollum for leave
781 to file his petition herein, the motion of Joshua Bradwell for leave to file his petition herein, the motion of H. S. McComb for leave to file his petition herein, and the petition of Frederick A. Foster heretofore filed herein, after argument of counsel for the respective parties named, and an inspection of the record, and said several motions and petitions, it is ordered, adjudged, and decreed—

First. That the said John V. McCollum, J. Bardwell, and H. S. McComb have leave to file their several petitions, and that the same be considered as filed prior to the entry of this order, and that the petitioners, the said Foster, Bardwell, McCollum, and McComb, have until the July rule day to file a bill consolidating their claims, and setting up more specifically their several claims presented in their several petitions now on file, but no other or further claims, and that they serve a copy of their said bill on James Grant for the use of complainants; that the complainants and interveners demur, plead, or answer to said
782 bill by the rule day in August following, and that thereafter the parties proceed as in other causes in chancery.

And it is further ordered that the reciever set apart two hundred thousand dollars of the fund in his hands, and refrain from distributing the same until the further order of the court.

Second. That the prayer of the petitioners above named, for an order restraining the reciever from distributing any of the fund in his hands until their rights to share in the distribution thereof is determined, is refused and denied as to all of said fund except the sum of two hundred thousand dollars, and the motion of the complainants for an order directing the reciever to distribute said fund is sustained as to all except said two hundred thousand dollars; and the reciever is ordered to proceed forthwith to make the distribution of all of said fund except the said sum of two hundred thousand dollars, according to the directions given in the decree herein to the several parties to whom said decree directs such distribution to be made.

783 That, in order to make such distribution, he will sell and convert into cash, as provided in said decree, all of the bonds of the Chicago, Rock Island and Pacific Railroad Company in his hands, except the sum of two hundred thousand dollars.

Provided, that such of said parties to whom the distribution is to be made as shall so elect, shall have the right to recieve the amounts coming to them, respectively, or any part thereof, in said bonds, in specie,

at a price to be agreed upon between them and the reciever, and approved by a judge of this court, not less than the current market price of the stock exchange in New York, at the date of distribution; and the reciever shall deliver the bonds to them in payment, at such rate accordingly.

And it is further ordered, (the defendants Wilson and Elliott having filed their written consent thereto as provided by said decree,) that there be paid to said parties entitled thereto, in making such distribution,
(so far as said amount to be distributed will suffice therefor,) of
784 their claims not yet matured, on the terms and conditions and in the order of priority of payment provided by said decree.

And thereupon the petitioners, Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, and each of them, pray an appeal to the Supreme Court of the United States from the order and decree contained in the "second" paragraph hereinbefore set out, being the order denying and refusing the relief prayed in their petitions, and in the petition of each of them, that the receiver herein be directed to refrain from distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing a portion of the funds in the hands of the reciever, and directing and ordering a distribution of a part thereof; which appeals are allowed to them, and each of them, upon their filing a bond with sureties, in the penal sum of five hundred dollars, as provided by law, for the costs of the appeal.

785 Provided that, in order to supersede and stay execution of said orders and decrees pending the appeal, they shall give bond, with sureties conditioned and approved as provided by law, in the penal sum of nine hundred thousand dollars.

J. M. LOVE, *Judge.*

Endorsed: Filed May 26th, 1869.

GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the third day of June, in the May term, A. D. 1869, came Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, by Withrow and Wright; Scammon, McCagg and Fuller; Polk, Hubbell and Barcroft; and Nourse and Kauffman, their solicitors, and filed in said clerk's office and appeal bond; which appeal bond is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

786 Know all men by these presents, that we, John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, as principals, and Samuel M. Nickerson, Daniel Thompson, Benjamin F. Murphy, George L. Davenport, George A. Davenport, F. R. West, Hoyt Sherman, George C. Tichenor, W. S. Pritchard, and F. W. Palmer, as sureties, are held and firmly bound unto Mark Howard, John Webber, Joseph Young, Clark W. Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margarett I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, in the sum of nine hundred thousand dollars, to be paid to the said Mark Howard and his associates, as plaintiffs in this case, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and

each of us jointly and severally, and our and each of our heirs,
787 executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this thirty-first day of May, A. D. 1869.

Whereas the above-named John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, have taken an appeal to the Supreme Court of the United States from said circuit court of the United States for the district of Iowa, to reverse the judgment and decree rendered in the above-entitled suit by the said circuit court of the United States in and for the district of Iowa;

Now, therefore, the condition of this obligation is such that if the above-named John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, shall prosecute their appeal to effect and answer all costs, if they shall fail to make good their plea, and shall in all things abide the judgment of the said United States Supreme Court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

788 SAMUEL M. NICKERSON. [SEAL.]
DANIEL THOMPSON. [S'L.]
BENJAMIN F. MURPHY. [S'L.]
GEO. L. DAVENPORT. [S'L.]
GEO. A. DAVENPORT. [S'L.]
F. R. WEST. [S'L.]
HOYT SHERMAN. [S'L.]
GEO. C. TICHENOR. [S'L.]
WM. S. PRITCHARD. [S'L.]
JOHN V. McCOLLUM, [S'L.]
By SCAMMON, McCAGG & FULLER, *his Att'ys.*
FREDERICK A. FOSTER, [SEAL.]
By WITHROW AND WRIGHT, *his Att'ys.*
J. BARDWELL, [SEAL.]
By POLK AND HUBBELL, *his Att'ys.*
H. S. McCOMB, [SEAL.]
Per NOURSE AND KAUFFMAN, *his Attor's.*
F. W. PALMER. [SEAL.]

The above bond is approved as to the form thereof, and also as to the sufficiency of the sureties for the penalty of the same.

June second, 1869.

J. M. LOVE, *Judge, &c.*

Endorsed: Filed June 3d, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

789 On this day, to wit, the third day of June, in the May term A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now come John V. McCollum, J. Bardwell, H. S. McComb, and Frederick A. Foster, petitioners in the above-entitled action, and in open court present their appeal and supersedias bond, in compliance with the requirements of the order allowing their appeal from the decree hereinbefore entered, on the hearing of the several petitions filed herein, and

at a price to be agreed upon between them and the reciever, and approved by a judge of this court, not less than the current market price of the stock exchange in New York, at the date of distribution; and the reciever shall deliver the bonds to them in payment, at such rate accordingly.

And it is further ordered, (the defendants Wilson and Elliott having filed their written consent thereto as provided by said decree,) that there be paid to said parties entitled thereto, in making such distribution,

784 (so far as said amount to be distributed will suffice therefor,) of their claims not yet matured, on the terms and conditions and in the order of priority of payment provided by said decree.

And thereupon the petitioners, Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, and each of them, pray an appeal to the Supreme Court of the United States from the order and decree contained in the "second" paragraph hereinbefore set out, being the order denying and refusing the relief prayed in their petitions, and in the petition of each of them, that the receiver herein be directed to refrain from distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing the fund in his hands, and sustaining complainant's and intervenor's motion for an order distributing a portion of the funds in the hands of the reciever, and directing and ordering a distribution of a part thereof; which appeals are allowed to them, and each of them, upon their filing a bond with sureties, in the penal sum of five hundred dollars, as provided by law, for the costs of the appeal.

785 Provided that, in order to supersede and stay execution of said orders and decrees pending the appeal, they shall give bond, with sureties conditioned and approved as provided by law, in the penal sum of nine hundred thousand dollars.

J. M. LOVE, *Judge.*

Endorsed: Filed May 26th, 1869.

GEORGE B. CORKHILL, *Clerk.*

On this day, to wit, the third day of June, in the May term, A. D. 1869, came Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, by Withrow and Wright; Scammon, McCagg and Fuller; Polk, Hubbell and Barcroft; and Nourse and Kauffman, their solicitors, and filed in said clerk's office and appeal bond; which appeal bond is in the words and figures following, to wit:

Circuit court of the United States for the district of Iowa.

786 Know all men by these presents, that we, John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, as principals, and Samuel M. Nickerson, Daniel Thompson, Benjamin F. Murphy, George L. Davenport, George A. Davenport, F. R. West, Hoyt Sherman, George C. Tichenor, W. S. Pritchard, and F. W. Palmer, as sureties, are held and firmly bound unto Mark Howard, John Webber, Joseph Young, Clark W. Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margarett I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, in the sum of nine hundred thousand dollars, to be paid to the said Mark Howard and his associates, as plaintiffs in this case, their executors or administrators, to which payment, well and truly to be made, we bind ourselves, and

each of us jointly and severally, and our and each of our heirs,
787 executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this thirty-first day of May, A. D. 1869.

Whereas the above-named John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, have taken an appeal to the Supreme Court of the United States from said circuit court of the United States for the district of Iowa, to reverse the judgment and decree rendered in the above-entitled suit by the said circuit court of the United States in and for the district of Iowa;

Now, therefore, the condition of this obligation is such that if the above-named John V. McCollum, Josiah Bardwell, H. S. McComb, and Frederick S. Foster, shall prosecute their appeal to effect and answer all costs, if they shall fail to make good their plea, and shall in all things abide the judgment of the said United States Supreme Court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

788 SAMUEL M. NICKERSON. [SEAL.]
DANIEL THOMPSON. [S'L.]
BENJAMIN F. MURPHY. [S'L.]
GEO. L. DAVENPORT. [S'L.]
GEO. A. DAVENPORT. [S'L.]
F. R. WEST. [S'L.]
HOYT SHERMAN. [S'L.]
GEO. C. TICHENOR. [S'L.]
WM. S. PRITCHARD. [S'L.]
JOHN V. McCOLLUM, [S'L.]
By SCAMMON, McCAGG & FULLER, *his Att'ys.*
FREDERICK A. FOSTER, [SEAL.]
By WITHROW AND WRIGHT, *his Att'ys.*
J. BARDWELL, [SEAL.]
By POLK AND HUBBELL, *his Att'ys.*
H. S. McCOMB, [SEAL.]
Per NOURSE AND KAUFFMAN, *his Attor's.*
F. W. PALMER. [SEAL.]

The above bond is approved as to the form thereof, and also as to the sufficiency of the sureties for the penalty of the same.

June second, 1869.

J. M. LOVE, *Judge, &c.*

Endorsed: Filed June 3d, A. D. 1869.

GEORGE B. CORKHILL, *Clerk.*

789 On this day, to wit, the third day of June, in the May term A. D. 1869, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

MARK HOWARD ET AL.
vs.
THE CITY OF DAVENPORT ET AL.

Now come John V. McCollum, J. Bardwell, H. S. McComb, and Frederick A. Foster, petitioners in the above-entitled action, and in open court present their appeal and supersedias bond, in compliance with the requirements of the order allowing their appeal from the decree hereinbefore entered, on the hearing of the several petitions filed herein, and

move the court to approve the same; and the court having inspected said bond as to its sufficiency in form and security, orders that the said bond be filed, and is approved as to the form thereof, and the sufficiency of the sureties for the penalty thereof.

J. M. LOVE, *Judge.*

Endorsed: Filed June 3rd, 1869.

GEORGE B. CORKHILL, *Clerk.*

790 THE DISTRICT OF IOWA, *ss:*

I, George B. Corkhill, clerk of the circuit court of the United States for the said district of Iowa, do hereby certify that the foregoing transcript, from folio one to one thousand nine hundred and fifty-four, and from page one to seven hundred and eighty-nine inclusive, contains a full, true, and perfect copy from the record, of all the proceedings of said court in said cause, wherein Mark Howard and John Webber were plaintiffs, and Joseph Young, Clark Durant, Charles W. Durant, Robert Murray, Henry Vanderveer, William Elliott, George Bliss, Betsey Tracy, Harriet Le Conte, Margaret I. Nisbet, Joseph W. Clark, Volkert P. Douw, Christopher Y. Lansing, and Jared F. Harrison, intervening claimants, and the City of Davenport, the Mississippi and Missouri Railroad Company, the Chicago and Rock Island Railroad Company, the Chi-
cago, Rock Island, and Pacific Railroad Company, George W. Stan-
791 ton, jr., John Elliott, Blakely Wilson, the City of Muscatine, the City of Iowa City, and the County of Scott, defendants, and Frederick A. Foster, John V. McCollum, J. Bardwell, and H. S. McComb, intervening claimants, as the original of the same now remain in my custody.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at my office in the city of Des Moines, in said district, this 15th day of Nov., A. D. 1869.

[SEAL.] GEORGE B. CORKHILL, *Clerk.*

Clerk's fees for transcript, $215 00.

(Indorsement on record:) In the United States circuit court, district of Iowa. John V. McCollum, Frederick A. Foster, J. Bardwell, & H. S. McComb, appellants, ag't Mark Howard, John Webber, Joseph Young, and several others, appellees. Transcript.

11, 344 406

Regimental

SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 1869.

M C Collum

FREDERICK A. FOSTER, et als, APPELLANTS,
vs.
MARK HOWARD, et als, APPELLEES.

APPEALS FROM THE CIRCUIT COURT FOR THE DISTRICT OF IOWA.

UNITED STATES, ex rel, MARK HOWARD, et als,
vs.
THE JUDGES OF THE U. S. CIRCUIT COURT FOR THE DISTRICT OF IOWA.

MANDAMUS FROM SUPREME COURT.

BRIEF FOR HOWARD ET ALS, APPELLEES AND RELATORS, ON MOTIONS IN THE ABOVE ENTITLED CAUSES.

I.

Of the two appeals taken by Foster et als, viz: first, from so much of the interlocutory order made on their petitions for leave to become parties, &c., as refused to suspend execution of the original decree, except as to part of the fund; and second, from the final decree made on their crossbill, disposing of their claims on the merits, the former, besides being improperly allowed,

as taken from a non-appealable order, (see authorities cited by Mr. Grant, also, Young v. Grundy, 6 Cranch, 51), is superseded and rendered nugatory by the final decree which is the subject of the latter. The interlocutory order, so far as it related to suspension of the original decree, was merely provisional and temporary, and was superseded or vacated by the final decree, adjudicating petitioners' claims upon the merits, and finally disposing of the whole fund. It is like an order for a temporary injunction, followed by a decree dismissing the bill. The first appeal, even if it ever had any virtue, is now *functus officio*, and should be dismissed.

II.

The Circuit Court had no right nor power, after Howard et als. had by their superior diligence procured the payment of this fund into Court, and a decree for its distribution to themselves as creditors of the M. & M. Co., and after affirmance of that decree in this court, to open it to let in other creditors, having no superior rights, to reap the benefit of the complainants' exertions.

Nothing is better settled than that a judgment creditor, by first filing his bill to reach equitable assets of the debtor, gains a lien thereon paramount to other creditors, who subsequently file similar bills; (McDermott v. Strong, 4 Johns. Ch. 687; Weed v. Pierce, 9 Cow., 728, 729; Beck v. Burdett, 1 Paige, 305, 309; Edmeston vs. Lyde, 1 ib. 639; Eager v. Price, 2 ib. 333, 338; Corning v. White, 2 ib. 567; Burrall v. Leslie, 6 ib. 445). And though the property of a corporation is regarded in equity as a trust-fund for the payment of its debts, this does not give any particular creditor, as such, a vested interest therein, nor prevent the corporation itself from paying one creditor in full out of such assets, in preference to another, nor one creditor from

acquiring a priority over others by levy of attachment or execution at law, (when the property can be reached in that way), or by proceedings in equity which are equivalent thereto, when the assets are of an equitable character. "*If held by the corporation itself, and so invested as to be subject to legal process, the fund may be levied on by such process*," &c., (per Clifford, J. in this case, 7 Wall. 410). And see Myers v. Zanesville M. Co., 11 Ohio, 273, and 13 ib. 197. Certainly, what Howard et als. had done to appropriate this fund to payment of their claims, prior to the presentation of the petitions of Foster et als, was of no inferior force or virtue to a levy at law.

The pretense of a superior lien on the fund, in favor of Foster and als, by virtue of the mortgages on the M. & M. R. R. is simply frivolous. The fund was not realized by a *foreclosure* sale, but by a sale by *private contract*, the vendors, as preliminary to the fulfillment thereof, *having obtained title* by means of a foreclosure. Such was the view taken by this court, on the former appeal, (See 7 Wall. p. p. 408, 414), and its correctness is decisively shown by the single fact, that while the road was sold under the foreclosure in parcels, corresponding to those embraced in the respective mortgages, the $5,500,000 was the price agreed to be paid for the whole road as an entirety, without any reference to the value of its several divisions. We would thank our opponents to inform the court *how much* of the fund was realized by the foreclosure of *their* mortgage, viz: that of the western division; or by what rule the proportion is to be ascertained.

III.

Mandamus to the Circuit Court, requiring it to execute the original decree, is the proper and only adequate remedy. If the court below was wrong in letting

the appellants in at all, and in suspending the execution of its decree; if the appellants had no *status* in the case; then we cannot be compelled to yield them the ground thus wrongfully gained, by awaiting the final issue, in this court, of a litigation into which they had no right to compel us to enter. Otherwise this fund might be locked up forever by successive parties intruding themselves into the case, each claiming that he was not bound by what had been adjudicated against his predecessors.

IV.

The authorities cited by counsel for Foster et als. in support of their position that while the fund is still in court, though after a decree disposing of it, third parties claiming an interest in it are allowed to intervene and set up their claims, have no application to this case. They relate to cases where the parties so intervening have *vested* rights to or liens upon the fund, anterior to their commencing proceedings to enforce the same; and not to the case of different creditors successively pursuing property of their common debtor, which, though liable to be appropriated by any or all of them to the satisfaction of their respective claims, through the ordinary remedies at law or in equity, is subject to no specific lien in favor of any particular creditor, prior to the acquisition of such a lien by a resort to those remedies. The latter is the present case. Foster et als. are simply creditors of the M. & M. R. R. Co., just as Howard et als were. The fund was open to the pursuit of all alike, but some have been more diligent than others, and by the use of legal remedies have acquired a priority—just as they would have done if the fund could have been reached by execution, and they had first levied on it.

V.

The appeal of Foster et als. cannot operate as a supersedeas of the original decree. The case stands thus: The fund, amounting now to more than $650,000, being in the custody of the court, and Howard et als. having obtained a decree for its distribution among themselves, which has been affirmed by this court. Foster, et als, present petitions claiming, in the aggregate, about $150,000 of the fund, and move for a suspension of execution of the decree *in toto*, until their claims are adjudicated. The court orders a sum deemed more than enough to pay their entire claims, in any event, viz: $200,000, to be reserved, and directs execution of the decree as to the remainder. The latter direction was quite supererogatory, and the right of Howard et als. to such execution in no degree depends on this order, as the original decree would of course have to be executed, except so far as a suspension thereof was ordered. From the *refusal to tie up the whole fund* embodied in this order, the *first* appeal of Foster, et als. is taken, and the court below held it to operate to suspend distribution of the *entire fund*, that is, as a supersedeas of the original decree *in toto*. Afterwards the claims of Foster et als. are brought to a hearing on the merits, and a further decree is made, finding that there is due to them, out of the $150,000 claimed, about $17,000; awarding them a dividend on that sum, *pro rata* with the original complainants, which would make their share of the fund about $10,000; and opening the original decree so as to let them in to share in its benefits on this basis. From this their *second* appeal is taken, which is also claimed, and by the court below *allowed* to work a supersedeas of the entire original decree.

We deny that it has any such effect. If it has, then it is in the power of anybody at his sole will and pleas-

ure to suspend the execution of any decree for the disposition of a fund in court, by simply claiming it, in part or in whole, moving for a suspension of the decree until his claim is passed on, and appealing from the denial of his motion; and the fund may be tied up forever, by a repetition of the same process, *ad infinitum*. It makes no difference that the court below ordered a suspension as to *part* of the fund. As to the residue of it, the case is the same as though no such partial suspension had been granted. If the claim of the appellants as to the effect of their appeal is well founded, then it logically follows that if their petitions had in the outset been totally rejected, and no suspension to any extent granted, they could still have arrested the execution of the decree by taking an appeal.

The case, as to supersedeas, is precisely like an application for an injunction to stay execution of a judgment at law on equitable grounds. Suppose the complainant, on filing his bill, moves for a temporary injunction, and his motion being denied, appeals from the order of denial; can such appeal be made of itself to operate as an injunction, and prevent the execution of the judgment by virtue of a "supersedeas?" On the contrary, an appeal from an order or decree *dissolving* an injunction once actually granted, will not, by way of supersedeas, continue the injunction in force, pending the appeal.

Hoyt v. Gelston, 13 Johns. 139.
Wood v. Dwight, 7 Johns. Ch. 295.
Hart v. Mayor of Albany, 3 Paige, 381.
Graves v. Maguire, 6 ib. 379.

And this court held, in *Young v. Grundy*, 6 Cranch, 51, that an interlocutory order dissolving an injunction was not appealable.

The truth is, that there is and can be no such thing as a supersedeas, attendant on an appeal from an order,

judgment or decree, simply in *denial* of the appellant's claim. In such case there is nothing to supersede. A party can in no case actually *obtain* the relief (whether final or temporary), which the court has denied him, by appealing from the order of denial. Yet this is precisely the attitude of Foster et als. the appellants. They do not appeal from the original decree, to which they were not parties, which was rendered before they appeared in the court, and upon which alone and independent of any subsequent proceedings, the rights of Howard et als. depend. They commenced a new and subsequent proceeding, to obtain relief out of the fund disposed of by that decree, and in aid of such proceeding, they applied for a suspension of the execution of the prior decree. That is, in effect they asked for a temporary injunction against such execution. They obtained in the first instance, a provisional and temporary suspension *in part*, appealed from the *refusal* of a suspension *in toto*, and claimed that the appeal *gave* them (what the court had denied), a suspension *in toto*, and the court below sustained them in that position! Still further, on final hearing the court dissolved its provisional order of partial suspension (which had reserved $200,000 out of the fund), by granting Foster et als. about $12,000, and dismissing the residue of their claim. They again appeal, and claim that this appeal operates, by the magic spell of "supersedeas," not merely to continue in force the original order of temporary suspension as to the $200,000, but to suspend the original decree *in toto*, and indefinitely tie up the whole fund of $650,000 and upwards; and the court below sustains them in *that* position!

This, we submit, cannot be the law. Suspension of the execution of a decree, as the result of an appeal, is a matter of strict right, and not dependant on the discretion of the court below; and according to appellants

doctrine, as already remarked, a fund might be tied up forever by a succession of appeals, however plainly frivolous.

We claim that even if the court shall be of opinion that the court below had the right to entertain the applications of Foster et als. and that its proceedings subsequent to the decree have been correct, still, no right to suspension of the original decree, beyond that granted by the court below, has been acquired by appellants by virtue of their appeals, and that since the Circuit Court has refused to execute that decree to any extent whatever, it should be compelled to do so by mandamus from this court.

Our petition in this court was so framed as to ask for a writ commanding execution of our decree, either complete, or to such extent as the court should deem us entitled to; and since it is entirely discretionary with the court to grant a peremptory writ in the first instance (Knox Co. v. Aspinwall, 24 How. 376), and all the facts are before it, and all the parties have been fully heard, it should be no obstacle to the granting of a mandate directing the execution of the original decree, except as to the sum awarded to Foster et als. by the last decree, (if the court should deem us entitled to no more,) that the alternative writ which has been issued goes beyond that measure of relief.

JOHN N. ROGERS,
of Counsel for HOWARD ET ALS,
Appellees and Relators.

Supreme Court of the United States.

DECEMBER TERM, 1869.

FREDERIC FOSTER and others,
Appellants,
vs.
MARK HOWARD and others,
Appellees.

From the District of Iowa.

CASE.

At May term, 1868, of the Iowa Circuit Court, a final decree was rendered in favor of Mark Howard and others vs. the city of Davenport and others: docketed in this court (319). The Railroad Company vs. Howard and others, whereby a fund, which was intended to be paid to the stockholders of the Mississippi and Missouri Railroad Company, was decreed to be paid to Howard and others, general creditors of the Mississippi and Missouri Railroad Company. This decree was affirmed in this court at December term, 1868.

The fund was about six hundred thousand dollars. At the October term, 1868, the court below, at the instance of Foster, suspended this decree until the decision here, when it was affirmed, and at May term, 1869, of the court below, Foster, McComb, McCollum and Bardwell were allowed by the court to intervene and claim a part of this fund. The total amount of all their claims was less than a hundred and fifty thousand dollars.

The court ordered all the fund but two hundred thousand dollars to be divided among the plaintiffs, and retained that sum to answer the claims of Foster and associates, who filed a bill for themselves alone. From this order dividing the surplus, Foster and others appealed, gave bond in eight hundred thousand dollars, and the court allowed this appeal to

suspend the operation of the order dividing the four hundred thousand dollars. At the October term, 1869, the case of Foster and others was heard and a final decree made, dismissing the bill as to McComb, and allowing Foster and others to come in and *pro rate* with the plaintiffs on the aggregate sum of seventeen thousand dollars. The claim of McComb was dismissed, but on the same basis, if he was entitled to his whole claim, he would *pro rate* on eighty thousand dollars. Their share of the fund would be about sixty per cent. of their claims, so that seventy-five thousand dollars would cover every dollar that they could be allowed if successful in this court.

From this latter decree they again appealed, and gave bond in seven hundred thousand dollars, hoping to supersede the appeal on the interlocutory order.

On these two appeals we now make two motions.

Supreme Court of the United States.

DECEMBER TERM, 1869.

FREDERIC FOSTER et als.
Appellants,
vs.
MARK HOWARD & others,
Appellees.

Appeal from the District of Iowa.

Now comes Mark Howard and others vs. John Elliott and others appellees, and move this court to dismiss the appeal and supersedeas in this cause, with damages, from the order or decree of the Circuit Court of Iowa, made at the May term, 1869, which ordered the distribution, &c., among the original plaintiffs, Howard and others, of all the money decreed to them by the Iowa Circuit Court, in May, 1868 and affirmed in this court December, 1868, except the sum of two hundred thousand dollars.

1st. Becanse said appeal was from an interlocutory decree, and no appeal lies therefrom.

2d. Because the order, so far as it retained $200,000, arrested the execution of a final decree of this court, contrary to law.

GRANT & ROGERS, for Howard and others.
GRANT, for Elliott and others, Trustees.

Supreme Court of the United States.

DECEMBER TERM, 1869.

FREDERIC FOSTER & others
Appellants.
vs.
MARK HOWARD & others
Appellees.

Appeal in Equity from the District of Iowa.

Now comes Mark Howard and others and John Elliott and others, appellees in this cause, and move the court to dismiss the appeal and supersedeas in this cause, from the decree of the Circuit Court of Iowa, rendered at the October term, 1869, which allowed Foster, McComb and Bardwell a certain sum out of the fund decreed to Howard and others, and dismissed McCollum's bill and changed the decree as to the guaranteed bonds made in Howard vs. Davenport, and affirmed in this court. Because the court below had no authority to make any decree modifying the original decree in Howard vs. Davenport, no appeal can be made so as to supersede it. The appellees move, if the above motion is not sustained, to qualify the supesedeas so as to limit it to a sufficient sum to protect the plaintiffs, if the judgment is reversed, say $75,000.

GRANT & ROGERS, for Howard and others.
GRANT, for Elliott and others, Trustees.

MOTIONS.

First, to dismiss the appeal from the order in May, dividing all the fund, except two hundred thousand dollars, with ten per cent. damages.

The appeal was from an interlocutory order of the court below, from which no appeal lies.

Carr vs. Hoxie, 13 Peters, 460.

"An appeal, by a defendant in equity, was dismissed. The Circuit Court on petition, allowed another appeal, and at the same time passed a decree to execute the original decree." (Just so here.) From this last the defendant appealed. *Held*, that the Circuit Court had power to execute the original decree; the second appeal not operating as a supersedeas, and that consequently the last appeal, (not being from a final decree) "must be dismissed."

Young vs. Parks and others, 15 Peters, 287.

"We are of opinion that the decree is interlocutory, and not final, in the sense of Congress. It is plain it does not dispose of the whole matter in controversy between the parties. If an appeal could lie upon the decree already rendered, it could also lie from time to time from any further decree of distribution of assets, which might be collected after a former decree without any final decision being made of the matters in controversy. This is against the clear import of the act of Congress, which gives an appeal only from a decree final, upon the whole matter in controversy."

Craighead vs. Wilson, 18 Howard, 199.

Where a case in chancery was referred to a master to state accounts between the plaintiffs and defendants, to ascertain how much property remained in hands of the latter, and how much had been sold, with price, to ascertain what was due from defendants to plaintiffs &c. That was not a final decree, such as could be appealed from."

Beebe vs. Russell, 19 Howard, 283.

"The appellate jurisdiction of this court only extends to cases where the judgment or decree is final. In chancery, a decree is interlocutory whenever an inquiry as to matter of fact or law, is directed preparatory to a final decision. A decree must decide the whole merits of a cause to be final."

Ogilvie vs. Knox Insurance Co., 2 Black, 539.

Reverse the parties, and this case is precisely like the one at bar.

"A decree before the funds of a corporation are collected that all the moneys recovered, or to be recovered, shall be distributed among the complainants and the several parties who have filed their petitions to be made, and appointing a master to state an account, is not a final decree; and, if original complainants appeal, the appeal must be dismissed as premature."

We ask in this cause for the highest damages which the court can give. This appeal was taken solely for delay; there was not the most remote excuse for it. The court retained an ample fund to pay not only the *pro rate*, but the whole claim of the plaintiffs and the appeal were taken contrary to law, purely to delay the plaintiffs in the receipt of their money, and not by the parties who were to lose the money. We do hope that the court will, by giving us full damages, in some small degree punish the parties who are seeking to prevent the plaintiffs from getting their money.

2. We move to dismiss the appeal from the final decree in Foster and McComb and others, rendered in October, 1869, and if their appeal is not totally dismissed, to qualify the supersedeas, by allowing the court below to distribute to the plaintiffs, all the fund except sufficient to protect the plaintiff, Foster, in case this court decides in their favor, which will not exceed seventy-five thousand dollars; and we ask damages in this cause also.

We hold, that the Circuit Court in Iowa is not only authorized, but bound, to execute the affirmed decree in Howard vs. Davenport and others, which was affirmed in this court, and that no new parties can go into that court and make such a case as will arrest the execution of that decree. There is no appeal and can be none from that cause, and thus supersedeas operates as an appeal.

We ask its dismissal with damages, and if not dismissed, we ask to modify it, so as to allow the stay of execution to be limited to $75,000.

GRANT & ROGERS, for Howard and others.

GRANT, for Elliott and others.

Supreme Court of the United States.

DECEMBER TERM, 1869.

JOHN V. MCCOLLUM ET ALS., Appellants
vs.
MARK HOWARD ET ALS., Appellees.
} No. 344.

Motion by appellees to dismiss the appeal, because it was not taken from a final decree; and for an allowance of damages against said appellants, because said appeal was taken, (as alleged by the appellees,) for delay.

POINTS FOR APPELLANTS IN OPPOSITION TO APPELLEES' CLAIM FOR DAMAGES.

The decree from which the appeal in this case was taken will be found on pages 267, 268, of the printed record, and if the court shall be of the opinion that it was not a final decree, then the appeal will be dismissed, but without damages, for the following reasons:

First. This court has no jurisdiction of appeals from the circuit courts, except those which are taken from final decrees, and if an appeal is taken and prosecuted from a decree which is not final, this court can take no further cognizance of the case than to dismiss the appeal.

Judiciary Act September 24, 1789, secs. 22, 23.
1 Statutes at Large, pages 84, 85.
Judiciary Act March 3, 1803, sec. 2.
2 Statutes at Large, 244.
Beebe *et al. vs.* Russell, 19 Howard, 283.
Boyce *vs.* Grundy, 9 Peters, 275.

The last clause of the 23d section of the act of 1789 authorizes this court, upon affirmance "of a judgment or decree, to adjudge to the respondent in error just damages for his delay," and the twenty-third rule of this court is founded upon the several judiciary acts, and does not apply to cases of dismissal for want of jurisdiction, which are provided for by the sixth section of the tenth rule of this court.

I have not been able to find any reported case where damages were awarded to the respondents upon dismissing an appeal from an interlocutory decree.

The appellants had presented their respective petitions to the circuit court, stating their claims upon the funds in the hands of the receiver appointed by said court in that cause, claiming superior rights to the fund, over those of Howard, Weber, and others, who had been awarded the right to it, and asked the circuit court to hear and determine their rights upon the petitions which they presented, and the answers of the other parties to the suit, whether original complainants or defendants.

This mode of proceeding was sanctioned, as the petitioners' counsel thought, by authority and precedent, directly in point.

Codwise *vs.* Gelston, 10 Johnson, 507.
Opinions of Yates and Kent, C. J.
Wiswall *vs.* Sampson *et al.*, 14 Howard, 52.
Williams, Adm'r. *vs.* Gibbes *et al.*, 17 Howard, 239.

The circuit court decided otherwise, and required the petitioners to file a consolidated bill in that cause, and proceed as in other cases in chancery.

The circuit court then ordered a distribution of the funds in the hands of the receiver, among the original parties to the suit, except the sum of $200,000.

That sum was sufficient to pay in full the claims of the petitioners, but their objection to that order was this: it diminished the funds in court, which might be appropriated to the payment of their claims, when established, and they were liable to have other claimants appear and establish a right to share

with them in the distribution of the fund, to the diminution of their dividends.

If the $200,000 had been absolutely set apart for the payment of the petitioners' claims, as they might thereafter appear, no complaint would or could have been made; but as they were denied the right to prosecute their claims in the manner which they adopted, and the fund out of which their claims, when established, would be paid, was liable to be diminished by the presentation of other claims of which they had then no knowledge, as it was not possible, in advance, to estimate or ascertain exactly the amount of the liabilities of an insolvent railroad company, they prayed and have prosecuted this appeal.

They also, in pursuance of the order of the circuit court, filed their consolidated cross-bill in said cause, which was answered by the respondents, heard in October last upon the merits, when the petitioners' obtained an allowance of seventeen or eighteen thousand dollars, which being less than the amount which they claimed, they took an appeal to this court, where the cause is pending as No. 406 of the calendar of this term; and any further discussion of the merits of this appeal is postponed until that cause shall come before the court either upon motion to dismiss the appeal or the cause shall be heard upon the merits.

SAMUEL W. FULLER,
Counsel for Appellants.

WASHINGTON, *February* 3, 1870.